

REPORTER'S RECORD

VOLUME 23 OF 35 VOLUMES

TRIAL COURT CAUSE NO. 1384794

COURT OF CRIMINAL APPEALS NO. AP-77,025

OBEL CRUZ-GARCIA

Appellant

VS.

THE STATE OF TEXAS

Appellee

) IN THE DISTRICT COURT

)

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) HARRIS COUNTY, TEXAS

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) 337TH JUDICIAL DISTRICT

GUILT-INNOCENCE PROCEEDINGS

On the 15th day of July, 2013, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Renee Magee, Judge presiding, held in Houston, Harris County, Texas;

Proceedings reported by computer-aided transcription/stenograph shorthand.

A P P E A R A N C E S

MS. NATALIE TISE
SBOT NO. 00795683
MR. JUSTIN WOOD
SBOT NO. 24039247
Assistant District Attorneys
1201 Franklin
Houston, Texas 77002
PHONE: 713.755.5800
ATTORNEYS FOR THE STATE OF TEXAS

- AND -

MR. R.P. 'SKIP' CORNELIUS
SBOT NO. 04831500
2028 Buffalo Terrace
Houston, Texas 77019-2408
PHONE: 713.237.8547

MR. MARIO MADRID
SBOT NO. 00797777
440 Louisiana, Suite 1225
Houston, Texas 77002-1659
PHONE: 713.877.9400
ATTORNEYS FOR THE DEFENDANT

Rolando Hernandez
Marilu Flores,
Interpreters

1	I N D E X		
2	VOLUME 23		
3	(GUILT-INNOCENCE PROCEEDINGS)		
3	JULY 15, 2013		
4		PAGE	VOL.
4	Closing Argument by State's Attorney.....	29	23
5	Closing Argument by Defense Attorney.....	40	23
5	Closing Argument by State's Attorney.....	78	23
6	Jury retired for deliberations.....	99	23
7	Verdict Received.....	101	23
8	Polling of the jury.....	102	23
9	Reporter's Certificate.....	107	23
10	Word Glossary.....	End of Volume	
11	ALPHABETICAL WITNESS INDEX		
12	(No witnesses this volume)		
13	EXHIBIT INDEX		
14	(No exhibits this volume)		
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 (Open court, defendant present, no jury)

2 THE COURT: On the record in Cause
3 No. 1384794, the State of Texas vs. Obel Cruz-Garcia.

4 We are present here on Monday morning, July
5 15th, 2013, to proceed with the reading of the charge to
6 the jury and arguments of counsel on the guilt phase of
7 the trial.

8 I have before me the charge that was
9 discussed and decided on last week as of Friday. And I
10 am going to hand that charge to the clerk of the Court
11 to be file-stamped. It is the charge that we had --
12 that each party had a copy of on Friday.

13 Having file-stamped a copy of that charge,
14 does the defense have any objections to the charge on
15 the record?

16 MR. CORNELIUS: No, Your Honor.

17 THE COURT: And does the State -- other
18 than the items we have put on the record, do you have
19 any objections further on that charge?

20 MS. TISE: No further objections, Judge.

21 THE COURT: Okay. Very good.

22 We're ready to bring in the jury as soon as
23 Deputy Perry returns saying they are ready.

24 (Open court, defendant and jury present)

25 THE COURT: Please be seated.

1 We're ready to proceed at this time in the
2 trial of the case of the State of Texas vs. Obel
3 Cruz-Garcia. Let the record reflect the attorneys for
4 the State, the attorneys for the defendant, and the
5 defendant are present in the courtroom. And all members
6 of the jury are present and seated in the courtroom.

7 At this time, ladies and gentlemen, I will
8 read you the charge of the Court containing the law
9 applicable to this case. Please listen carefully as I
10 read the charge to you. The original will be placed on
11 the table in the jury room when you retire to begin your
12 deliberations.

13 Cause No. 1384794, the State of Texas vs.
14 Obel Cruz-Garcia, in the 337th District Court of Harris
15 County, Texas.

16 Members of the jury: The defendant, Obel
17 Cruz-Garcia, stands charged by indictment with the
18 offense of capital murder, alleged to have been
19 committed on or about the 30th day of September, 1992,
20 in Harris County, Texas. The defendant has pleaded not
21 guilty.

22 A person commits the offense of murder if
23 he intentionally or knowingly causes the death of an
24 individual; or intends to cause serious bodily injury
25 and intentionally or knowingly commits an act clearly

1 dangerous to human life that causes the death of an
2 individual.

3 A person commits the offense of capital
4 murder if he intentionally commits murder, as
5 hereinbefore defined in paragraph one, and the person
6 intentionally commits the murder in the course of
7 committing or attempting to commit the offense of
8 Kidnapping. Kidnapping is a felony.

9 "In the course of committing" means conduct
10 that occurs in an attempt to commit, during the
11 commission, or in the immediate flight after the attempt
12 or commission of an offense.

13 "Attempt" to commit an offense occurs if,
14 with specific intent to commit an offense, a person does
15 an act amounting to more than mere preparation that
16 tends, but fails, to effect the commission of the
17 offense intended.

18 A person commits the offense of kidnapping
19 if he intentionally or knowingly abducts another person.
20 A person commits the offense of aggravated kidnapping if
21 he intentionally or knowingly abducts another person
22 with the intent to, one, facilitate the commission of a
23 felony or the flight after the attempt or commission of
24 a felony; or, two, inflict bodily injury on him; or,
25 three terrorize him or a third person. Sexual assault

1 and burglary of a habitation are felonies.

2 The term "abduct" means to restrain a
3 person with intent to prevent his liberation by:
4 A, secreting or holding him in a place where he is not
5 likely to be found; or, B, using or threatening to use
6 deadly force.

7 The term "restrain" means to restrict a
8 person's movements without consent, so as to interfere
9 substantially with his liberty, by moving him from one
10 place to another or by confining him. Restraint is
11 "without consent" if it is accomplished by force,
12 intimidation, or deception. "Consent" means assent in
13 fact, whether express or apparent. "Deadly force" means
14 force that is intended or known by the person acting to
15 cause, or in the manner of its use or intended use is
16 capable of causing, death or serious bodily injury.

17 A person commits the offense of sexual
18 assault if the person intentionally or knowingly,
19 one, causes the penetration of the female sexual organ
20 of another person by any means, without that person's
21 consent; or, two, causes the sexual organ of another
22 person, without that person's consent, to contact the
23 mouth of another person, including the defendant.
24 A sexual assault is without the consent of the other
25 person if, one the defendant compels the other person to

1 submit or participate by the use of physical force or
2 violence; or, two, the defendant compels the other
3 person to submit or participate by threatening to use
4 force or violence against the other person, and the
5 other person believes that the defendant has the present
6 ability to execute the threat.

7 A person commits the offense of burglary
8 if, without the effective consent of the owner, he
9 enters a habitation with intent to commit a felony or
10 theft. Sexual assault is a felony. "Enter" means to
11 intrude any part of the body, or any physical object
12 connected to the body.

13 "Habitation" means a structure or vehicle
14 that is adapted for the overnight accommodation of
15 persons, and includes, A, each separately secured or
16 occupied portion of the structure or vehicle and, B,
17 each structure appurtenant to or connected with the
18 structure or vehicle.

19 "Effective consent" means assent in fact,
20 whether express or apparent, and includes consent by a
21 person legally authorized to act for the owner. Consent
22 is not effective if induced by force, threats, deception
23 or coercion.

24 "Theft" is the unlawful appropriation of
25 property with intent to deprive the owner of said

1 property and without the owner's effective consent.

2 "Owner" means a person who has a greater right to
3 possession of the property than the defendant.

4 "Possession" means actual care, custody, control, or
5 Management of the property.

6 "Deadly weapon" means anything manifestly
7 designed, made, or adapted for the purpose of inflicting
8 death or serious bodily injury; or anything that in the
9 manner of its use or intended use is capable of causing
10 death or serious bodily injury.

11 "Bodily injury" means physical pain,
12 illness, or any impairment of physical condition.

13 "Serious bodily injury" means bodily injury that creates
14 a substantial risk of death or that causes death,
15 serious permanent disfigurement, or protracted loss or
16 impairment of the function of any bodily member or
17 organ.

18 The definition of intentionally relative to
19 the offense of capital murder is as follows: A person
20 acts intentionally, or with intent, with respect to a
21 result of his conduct when it is his conscious objective
22 or desire to cause the result.

23 The definitions of intentionally and
24 knowingly relative to the offenses of murder and sexual
25 assault are as follows:

1 A person acts intentionally, or with
2 intent, with respect to a result of his conduct when it
3 is his conscious objective or desire to cause the
4 result.

5 A person acts knowingly, or with knowledge,
6 with respect to a result of his conduct when he is aware
7 that his conduct is reasonably certain to cause the
8 result.

9 The definitions of intentionally and
10 knowingly relative to the offenses of kidnapping,
11 aggravated kidnapping and burglary of a habitation are
12 as follows:

13 A person acts intentionally, or with
14 intent, with respect to the nature of his conduct or to
15 a result of his conduct when it is his conscious
16 objective or desire to engage in the conduct or cause
17 the result.

18 A person acts knowingly, or with knowledge,
19 with respect to the nature of his conduct or to
20 circumstances surrounding his conduct when he is aware
21 of the nature of his conduct or that the circumstances
22 exist. A person acts knowingly, or with knowledge, with
23 respect to a result of his conduct when he is aware that
24 his conduct is reasonably certain to cause the result.
25 All persons are parties to an offense who are guilty of

1 acting together in the commission of the offense. A
2 person is criminally responsible as a party to an
3 offense if the offense is committed by his own conduct,
4 by the conduct of another for which he is criminally
5 responsible, or by both.

6 A person is criminally responsible for an
7 offense committed by the conduct of another if, acting
8 with intent to promote or assist the commission of the
9 offense, he solicits, encourages, directs, aids, or
10 attempts to aid the other person to commit the offense.
11 Mere presence alone will not constitute one a party to
12 an offense.

13 If, in the attempt to carry out a
14 conspiracy to commit one felony, another felony is
15 committed by one of the conspirators, all conspirators
16 are guilty of the felony actually committed, though
17 having no intent to commit it, if the offense was
18 committed in furtherance of the unlawful purpose and was
19 one that should have been anticipated as a result of the
20 carrying out of the conspiracy.

21 By the term "conspiracy" as used in these
22 instructions, is meant an agreement between two or more
23 persons with intent, that they, or one or more of them,
24 engage in conduct that would constitute the offense. An
25 agreement constituting a conspiracy may be inferred from

1 acts of the parties.

2 Before you would be warranted in finding
3 the defendant guilty of capital murder, you must find
4 from the evidence beyond a reasonable doubt not only
5 that on the occasion in question the defendant was in
6 the course of committing or attempting to commit the
7 felony offense of kidnapping of Angelo Garcia, Jr., as
8 alleged in this charge, but also that the defendant
9 specifically intended to cause the death of Angelo
10 Garcia, Jr., by stabbing Angelo Garcia, Jr., with a
11 deadly weapon, namely a sharp instrument; or you must
12 find from the evidence beyond a reasonable doubt that
13 the defendant, Obel Cruz-Garcia, with the intent to
14 promote or assist in the commission of the offense of
15 capital murder, if any, solicited, encouraged, directed,
16 aided or attempted to aid Rogelio Aviles and/or Carmelo
17 Martinez-Santana also known as "Rudy" in stabbing Angelo
18 Garcia, Jr., if he did, with the intention of thereby
19 killing Angelo Garcia, Jr.; or you must find from the
20 evidence beyond a reasonable doubt that on the occasion
21 in question the defendant, Obel Cruz-Garcia, entered
22 into an agreement with Rogelio Aviles and/or Carmelo
23 Martinez-Santana also known as "Rudy" to commit the
24 felony offense of kidnapping, or sexual assault or
25 burglary of a habitation, and pursuant to that agreement

1 they did carry out their conspiracy, and while in the
2 course of committing said conspiracy, Rogelio Aviles
3 and/or Carmelo Martinez-Santana also known as "Rudy"
4 intentionally caused the death of Angelo Garcia, Jr. by
5 stabbing Angelo Garcia, Jr. with a deadly weapon,
6 namely, a sharp instrument while in the course of
7 committing the kidnapping of Angelo Garcia, Jr. And the
8 murder of Angelo Garcia, Jr. was committed in
9 furtherance of the conspiracy and was an offense that
10 should have been anticipated by the defendant as a
11 result of carrying out the conspiracy; or you must find
12 from the evidence beyond a reasonable doubt not only
13 that on the occasion in question the defendant was in
14 the course of committing or attempting to commit the
15 felony offense of kidnapping of Angelo Garcia, Jr., as
16 alleged in this charge, but also that the defendant
17 specifically intended to cause the death of Angelo
18 Garcia, Jr., by an unknown manner or means; or you must
19 find from the evidence beyond a reasonable doubt that
20 the defendant, Obel Cruz-Garcia, with the intent to
21 promote or assist in the commission of the offense of
22 capital murder, if any, solicited, encouraged, directed,
23 aided or attempted to aid Rogelio Aviles and/or Carmelo
24 Martinez-Santana also known as "Rudy," if he did, with
25 the intention of thereby killing Angelo Garcia, Jr.; by

1 an unknown manner or means or you must find from the
2 evidence beyond a reasonable doubt that on the occasion
3 in question the defendant, Obel Cruz-Garcia, entered
4 into an agreement with Rogelio Aviles and/or Carmelo
5 Martinez-Santana also known as "Rudy" to commit the
6 felony offense of kidnapping, or sexual assault or
7 burglary of a habitation, and pursuant to that agreement
8 they did carry out their conspiracy, and while in the
9 course of committing said conspiracy, Rogelio Aviles
10 and/or Carmelo Martinez-Santana also known as "Rudy"
11 intentionally caused the death of Angelo Garcia, Jr. by
12 an unknown manner or means while in the course of
13 committing the kidnapping of Angelo Garcia, Jr., and the
14 murder of Angelo Garcia, Jr. was committed in
15 furtherance of the conspiracy and was an offense that
16 should have been anticipated by the defendant as a
17 result of carrying out the conspiracy, and unless you so
18 find, then you cannot convict the defendant of the
19 offense of capital murder.

20 Now, if you find from the evidence beyond a
21 reasonable doubt that on or about the 30th day of
22 September, 1992, in Harris County, Texas, the defendant,
23 Obel Cruz-Garcia, did then and there unlawfully, while
24 in the course of committing or attempting to commit the
25 kidnapping of Angelo Garcia, Jr., intentionally cause

1 the death of Angelo Garcia, Jr., by stabbing Angelo
2 Garcia, Jr. with a deadly weapon, namely a sharp
3 instrument; or if you find from the evidence beyond a
4 reasonable doubt that on or about the 30th day of
5 September, 1992, in Harris County, Texas, Rogelio Aviles
6 and/or Carmelo Martinez-Santana also known as "Rudy" did
7 then and there unlawfully while in the course of
8 committing or attempting to commit the kidnapping of
9 Angelo Garcia, Jr., intentionally cause the death of
10 Angelo Garcia, Jr. by stabbing Angelo Garcia, Jr. with a
11 deadly weapon, namely, a sharp instrument, and that the
12 defendant, Obel Cruz-Garcia, with the intent to promote
13 or assist the commission of the offense, solicited,
14 encouraged, directed, aided or attempted to aid Rogelio
15 Aviles and/or Carmelo Martinez-Santana also known as
16 "Rudy" to commit the offense, if he did; or if you find
17 from the evidence beyond a reasonable doubt that the
18 defendant, Obel Cruz-Garcia, and Rogelio Aviles and/or
19 Carmelo Martinez-Santana also known as "Rudy" entered
20 into an agreement to commit the felony offense of
21 kidnapping, or sexual assault or burglary of a
22 habitation, and pursuant to that agreement, if any, they
23 did carry out their conspiracy and that in Harris
24 County, Texas, on or about the 30th day of September,
25 1992, while in the course of committing said conspiracy,

1 Rogelio Aviles and/or Carmelo Martinez-Santana also
2 known as "Rudy" intentionally caused the death of Angelo
3 Garcia, Jr. by stabbing Angelo Garcia, Jr. With a deadly
4 weapon, namely a sharp instrument, while in the course
5 of kidnapping Angelo Garcia, Jr., and the murder of
6 Angelo Garcia, Jr. was committed in furtherance of the
7 conspiracy and was an offense that should have been
8 anticipated by the defendant as a result of carrying out
9 the conspiracy; or if you find from the evidence beyond
10 a reasonable doubt that on or about the 30th day of
11 September, 1992, in Harris County, Texas, the defendant,
12 Obel Cruz-Garcia, did then and there unlawfully, while
13 in the course of committing or attempting to commit the
14 kidnapping of Angelo Garcia, Jr., intentionally cause
15 the death of Angelo Garcia, Jr., by an unknown manner or
16 means; or if you find from the evidence beyond a
17 reasonable doubt that on or about the 30th day of
18 September, 1992, in Harris County, Texas, Rogelio Aviles
19 and/or Carmelo Martinez-Santana also known as "Rudy" did
20 then and there unlawfully while in the course of
21 committing or attempting to commit the kidnapping of
22 Angelo Garcia, Jr., intentionally cause the death of
23 Angelo Garcia, Jr. by an unknown manner or means, and
24 that the defendant, Obel Cruz-Garcia, with the intent to
25 promote or assist the commission of the offense,

1 solicited, encouraged, directed, aided or attempted to
2 aid Rogelio Aviles and/or Carmelo Martinez-Santana also
3 known as "Rudy" to commit the offense, if he did; or if
4 you find from the evidence beyond a reasonable doubt
5 that the defendant, Obel Cruz-Garcia, and Rogelio Aviles
6 and/or Carmelo Martinez-Santana also known as "Rudy"
7 entered into an agreement to commit the felony offense
8 of kidnapping or sexual assault or burglary of a
9 habitation, and pursuant to that agreement, if any, they
10 did carry out their conspiracy and that in Harris
11 County, Texas, on or about the 30th day of September,
12 1992, while in the course of committing said conspiracy,
13 Rogelio Aviles and/or Carmelo Martinez-Santana also
14 known as "Rudy" intentionally caused the death of Angelo
15 Garcia, Jr. by an unknown manner or means, while in the
16 course of kidnapping Angelo Garcia, Jr., and the murder
17 of Angelo Garcia, Jr. was committed in furtherance of
18 the conspiracy and was an offense that should have been
19 anticipated by the defendant as a result of carrying out
20 the conspiracy, then you will find the defendant guilty
21 of capital murder, as charged in the indictment.

22 Unless you so find from the evidence beyond
23 a reasonable doubt, or if you have a reasonable doubt
24 thereof, or if you are unable to agree, you will next
25 consider whether the defendant is guilty of the lesser

1 offense of murder. Therefore, if you find from the
2 evidence beyond a reasonable doubt that on or about the
3 30th day of September, 1992, in Harris County, Texas,
4 the defendant, Obel Cruz-Garcia, did then and there
5 unlawfully, intentionally or knowingly cause the death
6 of Angelo Garcia, Jr., by stabbing Angelo Garcia, Jr.
7 with a deadly weapon, namely, a sharp instrument; or if
8 you find from the evidence beyond a reasonable doubt
9 that on or about the 30th day of September, 1992, in
10 Harris County, Texas, Rogelio Aviles and/or Carmelo
11 Martinez-Santana also known as "Rudy," did then and
12 there unlawfully, intentionally or knowingly cause the
13 death of Angelo Garcia, Jr., by stabbing Angelo Garcia,
14 Jr. with a deadly weapon, namely, a sharp instrument,
15 and that the defendant, Obel Cruz-Garcia, with the
16 intent to promote or assist the commission of the
17 offense, solicited, encouraged, directed, aided or
18 attempted to aid Rogelio Aviles and/or Carmelo
19 Martinez-Santana also known as "Rudy" to commit the
20 offense, if he did; or if you find from the evidence
21 beyond a reasonable doubt that on or about the 30th day
22 of September, 1992, in Harris County, Texas, the
23 defendant, Obel Cruz-Garcia, did then and there
24 unlawfully intend to cause serious bodily injury to
25 Angelo Garcia, Jr., and did cause the death of Angelo

1 Garcia, Jr. by intentionally or knowingly committing an
2 act clearly dangerous to human life, namely, by stabbing
3 Angelo Garcia, Jr. with a deadly weapon, namely, a sharp
4 instrument; or if you find from the evidence beyond a
5 reasonable doubt that on or about the 30th day of
6 September, 1992, in Harris County, Texas, Rogelio Aviles
7 and/or Carmelo Martinez-Santana also known as "Rudy,"
8 did then and there unlawfully intend to cause serious
9 bodily injury to Angelo Garcia, Jr., and did cause the
10 death of Angelo Garcia, Jr. by intentionally or
11 knowingly committing an act clearly dangerous to human
12 life, namely, by stabbing Angelo Garcia, Jr. with a
13 deadly weapon, namely, a sharp instrument, and that the
14 defendant, Obel Cruz-Garcia, with the intent to promote
15 or assist the commission of the offense, solicited,
16 encouraged, directed, aided or attempted to aid Rogelio
17 Aviles and/or Carmelo Martinez-Santana also known as
18 "Rudy" to commit the offense, if he did; or if you find
19 from the evidence beyond a reasonable doubt that on or
20 about the 30th day of September, 1992, in Harris County,
21 Texas, the defendant, Obel Cruz-Garcia, did then and
22 there unlawfully, intentionally or knowingly cause the
23 death of Angelo Garcia, Jr., by an unknown manner or
24 means; or if you find from the evidence beyond a
25 reasonable doubt that on or about the 30th day of

1 September, 1992, in Harris County, Texas, Rogelio Aviles
2 and/or Carmelo Martinez-Santana also known as "Rudy,"
3 did then and there unlawfully, intentionally or
4 knowingly cause the death of Angelo Garcia, Jr., by an
5 unknown manner or means, and that the defendant, Obel
6 Cruz-Garcia, with the intent to promote or assist the
7 commission of the offense, solicited, encouraged,
8 directed, aided or attempted to aid Rogelio Aviles
9 and/or Carmelo Martinez-Santana also known as "Rudy" to
10 commit the offense, if he did; or if you find from the
11 evidence beyond a reasonable doubt that on or about the
12 30th day of September, 1992, in Harris County, Texas,
13 the defendant, Obel Cruz-Garcia, did then and there
14 unlawfully intend to cause serious bodily injury to
15 Angelo Garcia, Jr., and did cause the death of Angelo
16 Garcia, Jr. by intentionally or knowingly committing an
17 act clearly dangerous to human life, namely, by an
18 unknown manner or means; or if you find from the
19 evidence beyond a reasonable doubt that on or about the
20 30th day of September, 1992, in Harris County, Texas,
21 Rogelio Aviles and/or Carmelo Martinez-Santana also
22 known as "Rudy," did then and there unlawfully intend to
23 cause serious bodily injury to Angelo Garcia, Jr., and
24 did cause the death of Angelo Garcia, Jr. by
25 intentionally or knowingly committing an act clearly

1 dangerous to human life, namely, by an unknown manner or
2 means, and that the defendant, Obel Cruz-Garcia, with
3 the intent to promote or assist the commission of the
4 offense, solicited, encouraged, directed, aided or
5 attempted to aid Rogelio Aviles and/or Carmelo
6 Martinez-Santana also known as "Rudy" to commit the
7 offense, if he did, then you will find the defendant
8 guilty of murder.

9 Unless you so find from the evidence beyond
10 a reasonable doubt, or if you have a reasonable doubt
11 thereof, or if you are unable to agree, you will next
12 consider whether the defendant is guilty of the lesser
13 offense of aggravated kidnapping.

14 Therefore, if you find from the evidence
15 beyond a reasonable doubt that on or about the 30th day
16 of September, 1992, in Harris County, Texas, the
17 defendant, Obel Cruz-Garcia, did then and there
18 unlawfully, intentionally or knowingly abduct Angelo
19 Garcia, Jr., without consent, with intent to prevent his
20 liberation by secreting or holding Angelo Garcia, Jr. in
21 a place where Angelo Garcia, Jr. was not likely to be
22 found or by using or threatening to use deadly force on
23 Angelo Garcia, Jr., namely a sharp instrument, and with
24 intent to facilitate the commission of a felony; or
25 inflict bodily injury on Angelo Garcia, Jr.; or

1 terrorize Angelo Garcia, Jr. or another person; or if
2 you find from the evidence beyond a reasonable doubt
3 that on or about the 30th day of September, 1992, in
4 Harris County, Texas, Rogelio Aviles and/or Carmelo
5 Martinez-Santana also known as "Rudy," did then and
6 there unlawfully, intentionally or knowingly abduct
7 Angelo Garcia, Jr., without consent, with intent to
8 prevent his liberation by secreting or holding Angelo
9 Garcia, Jr. in a place where Angelo Garcia, Jr. was not
10 likely to be found or by using or threatening to use
11 deadly force on Angelo Garcia, Jr., namely a sharp
12 instrument, and with intent to facilitate the commission
13 of a felony; or inflict bodily injury on Angelo Garcia,
14 Jr.; or terrorize Angelo Garcia, Jr. or another person,
15 and that the defendant, Obel Cruz-Garcia, with the
16 intent to promote or assist the commission of the
17 offense, solicited, encouraged, directed, aided or
18 attempted to aid Rogelio Aviles and/or Carmelo
19 Martinez-Santana also known as "Rudy" to commit the
20 offense, if he did; or if you find from the evidence
21 beyond a reasonable doubt that on or about the 30th day
22 of September, 1992, in Harris County, Texas, the
23 defendant, Obel Cruz-Garcia, did then and there
24 unlawfully, intentionally or knowingly abduct Angelo
25 Garcia, Jr., without consent, with intent to prevent his

1 liberation by secreting or holding Angelo Garcia, Jr. in
2 a place where Angelo Garcia, Jr. was not likely to be
3 found or by using or threatening to use deadly force on
4 Angelo Garcia, Jr., by an unknown manner or means, and
5 with intent to facilitate the commission of a felony; or
6 inflict bodily injury on Angelo Garcia, Jr.; or
7 terrorize Angelo Garcia, Jr. or another person; or if
8 you find from the evidence beyond a reasonable doubt
9 that on or about the 30th day of September, 1992, in
10 Harris County, Texas, Rogelio Aviles and/or Carmelo
11 Martinez-Santana also known as "Rudy," did then and
12 there unlawfully, intentionally or knowingly abduct
13 Angelo Garcia, Jr., without consent, with intent to
14 prevent his liberation by secreting or holding Angelo
15 Garcia, Jr. in a place where Angelo Garcia, Jr. was not
16 likely to be found or by using or threatening to use
17 deadly force on Angelo Garcia, Jr., by an unknown manner
18 or means, and with intent to facilitate the commission
19 of a felony; or inflict bodily injury on Angelo Garcia,
20 Jr.; or terrorize Angelo Garcia, Jr. or another person,
21 and that the defendant, Obel Cruz-Garcia, with the
22 intent to promote or assist the commission of the
23 offense, solicited, encouraged, directed, aided or
24 attempted to aid Rogelio Aviles and/or Carmelo
25 Martinez-Santana also known as "Rudy" to commit the

1 offense, if he did, then you will find the defendant
2 guilty of aggravated kidnapping.

3 If you believe from the evidence beyond a
4 reasonable doubt that the defendant is guilty of either
5 capital murder on the one hand or murder or aggravated
6 kidnapping on the other hand, but you have a reasonable
7 doubt as to which of said offenses he is guilty, then
8 you must resolve that doubt in the defendant's favor and
9 find him guilty of the lesser offense of either murder
10 or aggravated kidnapping.

11 If you have a reasonable doubt as to
12 whether the defendant is guilty of any offense defined
13 in this charge you will acquit the defendant and say by
14 your verdict "not guilty."

15 An accomplice, as the term is here used,
16 means anyone connected with the crime charged, as a
17 party thereto, and includes all persons who are
18 connected with the crime by unlawful act or omission on
19 their part transpiring either before or during the time
20 of the commission of the offense, and whether or not
21 they were present and participated in the commission of
22 the crime. A person is criminally responsible as a
23 party to an offense if the offense is committed by his
24 own conduct, by the conduct of another for which he is
25 criminally responsible or by both. Mere presence alone,

1 however, will not constitute one a party to an offense.
2 A person is criminally responsible for an offense
3 committed by the conduct of another if, acting with
4 intent to promote or assist the commission of the
5 offense, he solicits, encourages, directs, aids, or
6 attempts to aid the other person to commit the offense.
7 The term "conduct" means any act or omission and its
8 accompanying mental state.

9 You are instructed that a conviction cannot
10 be had upon the testimony of an accomplice unless the
11 accomplice's testimony is corroborated by other evidence
12 tending to connect the defendant with the offense
13 charged, and the corroboration is not sufficient if it
14 merely shows the commission of the offense, but it must
15 tend to connect the defendant with its commission.
16 The witness, Carmelo Martinez-Santana also known as
17 "Rudy," is an accomplice, if an offense was committed,
18 and you cannot convict the defendant upon his testimony
19 unless you further believe that there is other evidence
20 in the case, outside of the testimony of Carmelo
21 Martinez-Santana, also known as "Rudy," tending to
22 connect the defendant with the offense committed, if you
23 find that an offense was committed, and the
24 corroboration is not sufficient if it merely shows the
25 commission of the offense, but it must tend to connect

1 the defendant with its commission, and then from all of
2 the evidence you must believe beyond a reasonable doubt
3 that the defendant is guilty of the offense charged
4 against him.

5 Our law provides that a defendant may
6 testify in his own behalf if he elects to do so. This,
7 however, is a right accorded a defendant, and in the
8 event he elects not to testify, that fact cannot be
9 taken as a circumstance against him.

10 In this case, the defendant has elected not
11 to testify and you are instructed that you cannot and
12 must not refer to or allude to that fact throughout your
13 deliberations or take it into consideration for any
14 purpose whatsoever as a circumstance against him.

15 You are further instructed that if there is
16 any evidence before you in this case regarding the
17 defendant's committing an alleged offense or offenses
18 other than the offense alleged against him in the
19 indictment in this case, you cannot consider such
20 evidence for any purpose unless you find and believe
21 beyond a reasonable doubt that the defendant committed
22 such other offense or offenses, if any, and even then
23 you may only consider the same in determining the
24 motive, opportunity, intent, preparation, plan,
25 knowledge, identity, or absence of mistake or accident

1 of the defendant, if any, in connection with the
2 offense, if any, alleged against him in the indictment
3 and for no other purpose.

4 You are further instructed that any
5 evidence that any witness has been convicted in any case
6 or cases was admitted before you for the purpose of
7 aiding you, if it does aid you, in passing upon the
8 credibility of the witness and the weight to be given
9 his or her testimony, and you will not consider the same
10 for any other purpose.

11 A Grand jury indictment is the means
12 whereby a defendant is brought to trial in a felony
13 prosecution. It is not evidence of guilt nor can it be
14 considered by you in passing upon the question of guilt
15 of the defendant. The burden of proof in all criminal
16 cases rests upon the State throughout the trial and
17 never shifts to the defendant.

18 All persons are presumed to be innocent and
19 no person may be convicted of an offense unless each
20 element of the offense is proved beyond a reasonable
21 doubt. The fact that he has been arrested, confined, or
22 indicted for, or otherwise charged with the offense
23 gives rise to no inference of guilt at his trial. The
24 law does not require a defendant to prove his innocence
25 or produce any evidence at all. The presumption of

1 innocence alone is sufficient to acquit the defendant,
2 unless the jurors are satisfied beyond a reasonable
3 doubt of the defendant's guilt after careful and
4 impartial consideration of all the evidence in the case.
5 The prosecution has the burden of proving the defendant
6 guilty and it must do so by proving each and every
7 element of the offense charged beyond a reasonable doubt
8 and if it fails to do so, you must acquit the defendant.
9 It is not required that the prosecution prove guilt
10 beyond all possible doubt; it is required that the
11 prosecution's proof excludes all reasonable doubt
12 concerning the defendant's guilt.

13 In the event you have a reasonable doubt as
14 to the defendant's guilt after considering all the
15 evidence before you, and these instructions, you will
16 acquit him and say by your verdict "not guilty."
17 You are the exclusive judges of the facts proved, of the
18 credibility of the witnesses and the weight to be given
19 their testimony, but the law you shall receive in these
20 written instructions, and you must be governed thereby.
21 After you retire to the jury room, you should select one
22 of your members as your foreman. It is his or her duty
23 to preside at your deliberations, vote with you, and
24 when you have unanimously agreed upon a verdict, to
25 certify to your verdict by using the appropriate form

1 attached hereto and signing the same as foreman.
2 During your deliberations in this case, you must not
3 consider, discuss, nor relate any matters not in
4 evidence before you. You should not consider nor
5 mention any personal knowledge or information you may
6 have about any fact or person connected with this case
7 which is not shown by the evidence.

8 No one has any authority to communicate
9 with you except the officer who has you in charge.
10 After you have retired, you may communicate with this
11 Court in writing through this officer. Any communication
12 relative to the cause must be written, prepared and
13 signed by the foreman and shall be submitted to the
14 court through this officer. Do not attempt to talk to
15 the officer who has you in charge, or the attorneys, or
16 the Court, or anyone else concerning any questions you
17 may have.

18 Your sole duty at this time is to determine
19 the guilt or innocence of the defendant under the
20 indictment in this cause and restrict your deliberations
21 solely to the issue of guilt or innocence of the
22 defendant. Following the arguments of counsel, you will
23 retire to consider your verdict.

24 The verdict page, which is the last two
25 pages, reads: We, the jury, find the defendant; Obel

1 Cruz-Garcia, not guilty; or: We, the jury, find the
2 defendant, Obel Cruz-Garcia, guilty of capital murder as
3 charged in the indictment; or: We, the jury, find the
4 defendant, Obel Cruz-Garcia, guilty of murder; or: We,
5 the jury, find the defendant, Obel Cruz-Garcia, guilty
6 of aggravated kidnapping.

7 I'm going to permit the lawyers to make
8 closing argument at this time.

9 Ms. Tise, would you like to proceed?
10 Mr. Wood.

11 Would you like a five-minute warning?

12 MR. WOOD: I'll be brief.

13 THE COURT: Okay.

14 **STATE'S CLOSING STATEMENT**

15 MR. WOOD: Ladies and gentlemen, I know
16 last week was a really long week for you guys. And you
17 have heard a lot of witness testimony over the course of
18 four or five days. And a lot of evidence is before you
19 now that you will take back with you and consider. Now
20 you get to talk about the facts of the case. You get to
21 talk about what you've heard. And I know that the job
22 that you now face is difficult in weighing all of that.
23 And Natalie and I appreciate all of the time and the
24 attention you have given to this case thus far, but your
25 job is not quite done.

1 You have just listened to the Judge for
2 last 30-plus minutes read the Judge's -- or the Court's
3 instruction to you, the jury charge. It is almost --
4 it's 26 pages. And there is a lot of information in
5 there. And it's a lot of legal mumbo-jumbo, probably,
6 what you heard the Judge read. And it's one of the
7 bizarre things about our criminal justice system that at
8 the end of a case, we give you all of this language that
9 sounds like lawyer talk and say: Here you go, you go
10 back there and you sort all that out.

11 So, I'm going to take a few minutes and
12 explain a few things and a few high points in this jury
13 charge about some of the law that you have. And then I
14 will sit down and the defense will speak to you and
15 Natalie will finish up.

16 So, I want to just go back now what's been
17 a month -- or a month plus since we talked to each of
18 you in jury selection and on voir dire when we talked to
19 you individually and hit a few of the high points about
20 some of those concepts that we talked about. And if you
21 will remember, one of the things that we talked about
22 was the elements of the offense and beyond a reasonable
23 doubt. And we visited with you and the Judge talked to
24 you about those elements of the offense of capital
25 murder as it relates to this case. And we told you that

1 at the end of the case, you would have to find that
2 Natalie and I proved this case to you beyond a
3 reasonable doubt. And we have to prove each and every
4 one of those elements of the offense.

5 That on or about September 30th, 1992, that
6 in Harris County, Texas, that this defendant, Obel
7 Cruz-Garcia, while in the course of committing or
8 attempting to commit the kidnapping of Angelo Garcia,
9 Jr., intentionally caused the death of Angelo Garcia,
10 Jr. by stabbing him with a deadly weapon, namely in this
11 case, a sharp instrument or by some unknown manner and
12 means.

13 Those are the elements of capital murder.
14 You have now heard five days of testimony relating to
15 those elements. And you have to find that we have
16 proven each and every one of those elements beyond a
17 reasonable doubt. And that's just fine, but I will ask
18 you to remember one of the things we talked about.
19 Beyond a reasonable doubt only goes to those elements up
20 there. And you, as a jury, as you work through this and
21 you talk through this, you might have to ask yourself --
22 if you have a conflict internally about something, you
23 ask yourself: Do I have a doubt about that? Is that
24 doubt that I have reasonable? And then, does it go to
25 one of those elements?

1 I suspect the defense might get up here and
2 tell you, you know, you heard a conflict in testimony
3 about X, Y, and Z. And a conflict in testimony alone is
4 not reasonable doubt. You have to ask yourself: Is it
5 reasonable and does it go to one of those elements? You
6 know, did Rudy tell you that two tires blew out on that
7 car or four tires blew out on that car after they --
8 after Angelo was killed? Who cares, ladies and
9 gentlemen? Does that discrepancy go to one of those
10 elements? That's the kind of thing that you have to
11 work through.

12 And at the end of all of that, you, as a
13 jury, based on the evidence that you have and the
14 testimony you've heard, may find exactly what it says up
15 there, that the defendant himself was responsible for
16 intentionally causing the death of Angelo Garcia, Jr.
17 after he was kidnapped.

18 But a couple of other concepts I want to
19 talk to you about that we spoke to you about in jury
20 selection, was that concept of the law of parties and
21 the law of co-conspirators. Because as we talked about,
22 it's easily imaginable, which we now know as it plays
23 out in this case, that more than one individual can be
24 involved in a criminal case. And when that happens, the
25 law says as it relates to the law of parties that when

1 more than one individual participates in the commission
2 of that offense, every individual can be guilty of that
3 offense. And the law of parties is laid out to you in
4 your jury charge, as well as the law of co-conspirators.
5 And it's on about Page 6 of your jury charge. And the
6 law of parties, basically, says that if that other
7 person solicits, encourages, directs, aids, or attempts
8 to aid that other person, then they are a party to that
9 offense.

10 Kind of similar to that is the law of
11 co-conspirators. And furthermore, the law of parties
12 says that someone's mere presence at a scene or at the
13 commission of an offense does not make that person a
14 party, but the law of co-conspirators says that in an
15 attempt to carry out a conspiracy to commit one
16 felony -- say, for example, in this case you have
17 kidnapping, you have the felony of burglary of a
18 habitation, you have the felony of sexual assault. That
19 while in the course of committing one of those felonies,
20 another felony is committed such as capital murder, that
21 all of the conspirators are guilty of the felony
22 actually committed, of capital murder as it applies in
23 this case, if that offense, that capital murder was
24 committed in furtherance of that unlawful purpose of
25 that original felony, and was one that should have been

1 anticipated. That's kind of how the law of
2 co-conspirators reads and how you will see it plays out.
3 Like I told you, that's going to be somewhere around
4 Page 6 of your jury charge.

5 And then what the jury charge does is it
6 takes that law and then for several pages it applies it
7 to this case. And trust me, you will have plenty of
8 opportunity to go back there and read and work through
9 some of that. But when you do that, you've got to apply
10 it to the defendant and what you know about this case
11 and what the facts of this case dictate as it relates to
12 law of parties. You may, as a jury, or some of you may
13 believe that the defendant himself is the one who
14 intentionally inflicted that blow that killed Angelo
15 Garcia. Maybe he is the one that personally stabbed him
16 and killed him or cut him and killed him. Some of you
17 may believe that, and that's fine.

18 Some of you may believe that out there in
19 Baytown at that scene on September 30th that the
20 defendant directed Roger to kill Angelo Garcia, Jr. And
21 by directing him, by aiding and participating in the
22 murder of Angelo Garcia, Jr., he is a party to capital
23 murder. And that makes him guilty of the charged
24 offense as it relates and how it works with law of
25 parties.

1 You can also work through the law of
2 co-conspirators and maybe find that in the commission of
3 one of those other felonies, burglary, kidnapping,
4 sexual assault, that that other felony occurred, capital
5 murder, and that because it was committed in furtherance
6 of that original felony and was one that should have
7 been anticipated, he can also be guilty under the law of
8 co-conspirators. That's kind of how those two concepts
9 of the law work as it relate to this case. And you will
10 have several pages explaining that.

11 Another concept that we talked about and
12 the Judge spoke to you in detail about in jury selection
13 was the idea of accomplice witnesses and when an
14 accomplice witness comes into court and testifies, how
15 you treat an accomplice witness' testimony. And the
16 law -- the jury instruction that you have, that starts
17 on Page 17 of the charge, it talks about accomplice
18 witness testimony. And it tells you in this case, Rudy
19 is considered an accomplice witness.

20 And if you remember back to jury selection,
21 the Judge told you that an accomplice witness can come
22 into court -- we spoke to you about that as well. They
23 can come into court and testify. You can weigh their
24 credibility, you can go back and review what they said,
25 figure out, hey, does Rudy fill in holes to this story,

1 do we find him credible, and that's perfectly fine. But
2 with an accomplice witness' testimony, the law says that
3 there has got to be something extra. There's got to be
4 some corroboration that tends to connect the defendant
5 to the offense committed. And the way that works is
6 you've got to look at Rudy's testimony, review that, and
7 then find out if there is some corroboration. And the
8 Judge told you that the law is actually the tiniest
9 little bit of corroboration is enough. But when you go
10 back and review the evidence and the testimony in this
11 case, you have a got corroboration, after corroboration,
12 after corroboration of what Rudy told you.

13 Probably the most damning corroboration for
14 the defendant in this case is the DNA evidence. You
15 know that there is DNA evidence that the defendant's DNA
16 was on the panties of Diana Garcia's the night of that
17 sexual assault, the defendant's DNA is on the vaginal
18 swabs taken after the rape of Diana Garcia on September
19 30th, 1992, the same time the kidnapping of Angelo
20 Garcia, Jr. taking place and ultimately his death. That
21 is corroboration that tends to connect the defendant to
22 the commission of the offense.

23 You've also got Linda Hernandez's
24 testimony. What did Linda tell you? Linda told you
25 that what we now know is shortly after Angelo Garcia,

1 Jr. had been killed, she's getting a call from the
2 defendant. And where is he at? Baytown, where the
3 offense was committed. Linda Hernandez's testimony
4 tends to connect the defendant to the commission of the
5 offense. That's more corroboration.

6 You then have Angelita Rodriguez's
7 testimony. Amongst many other credible things that
8 Angelita told you, she told that in that conversation
9 down in the Dominican Republic, the defendant told her
10 he did it. That's corroboration. So, you've got more
11 than enough corroboration with Rudy's testimony in
12 considering him as an accomplice witness.

13 One other area of the law or concept of the
14 law that I want to speak to you about is the idea of
15 lesser-included offenses. And if you were following
16 what the Judge said, you probably realized she was
17 talking about the offense of capital murder and then she
18 started talking about the offenses of murder and
19 aggravated kidnapping. And with lesser-included
20 offenses, the law says that the defense is able to ask
21 for you to be instructed on and consider lesser-included
22 offenses, if they apply. Well, of course, the offense
23 of murder and aggravated kidnapping apply in the case
24 because if you combine them, you get the charged offense
25 of capital murder. You remember us talking about that

1 in jury selection.

2 So, the way that works is that you've got
3 to look at all of the evidence that you have, base it on
4 what you have to consider. And if after considering all
5 of the evidence and all of the testimony you-all believe
6 that the defendant is guilty of the charged offense of
7 capital murder, then you are done. The jury charge
8 tells you if -- only if you have a disagreement as to
9 that do you then go through those lesser-included
10 offenses of first murder and then aggravated kidnapping.
11 And, of course, based on the evidence I would submit to
12 you he's guilty of murder and he's also guilty of
13 aggravated kidnapping. And when you combine those, he's
14 guilty of the charged offense of capital murder.

15 So, if you-all agree on that, you can stop
16 your discussion. But step back and think about that.
17 Because if you are asked to consider the lesser-included
18 offenses of murder and aggravated kidnapping in this
19 case, think how that plays out. If you were to believe
20 that the defendant is only guilty of the offense of
21 murder, just murder alone, you would then have to
22 believe that he had no involvement in the kidnapping of
23 Angelo Garcia, Jr., which makes absolutely no sense
24 based on the facts.

25 I guess you would have to believe that

1 little 6-year-old Baby Angelo somehow got down to
2 Baytown that night on September 30th, 1992, wandered
3 down or somehow got down there, and then came into
4 contact or encountered the defendant and he killed him.
5 That's ridiculous. That does not make sense based on
6 the facts. And you are asked to use your common sense.

7 The flip-side also does not make a lot of
8 sense. If you are to believe he was only guilty of the
9 offense of aggravated kidnapping, you would also then
10 have to believe that he had nothing to do with the
11 murder of Angelo Garcia, Jr., which based on what you
12 know, you know also does not make sense. So, that's
13 kind of how you work through the concepts of
14 lesser-included offenses. And I submit to you that when
15 you really look at the jury charge, that's pages --
16 around 11 through 16. And if you come to the
17 determination that you believe he's guilty of capital
18 murder, those pages, 11 and 16, a bulk of that jury
19 charge, may not be that relevant to you.

20 I'm going to sit down very shortly and the
21 defense will get up and speak to you, but before I sit
22 down, I want to leave you with one thought. And we know
23 that based on what you heard that from the time the
24 defendant got in that car on September 30th, 1992 and
25 left Diana and Arturo's apartment and drove down to

1 Baytown, it took him somewhere around 20 minutes
2 probably. That is roughly the exact amount of time I
3 have been standing up and talking to you, 20 minutes.

4 So, as I leave you, I want you to think
5 about Baby Angelo's last 20 minutes of his life. We
6 know he was taken from his home in the middle of the
7 night. We know that he was sat in that car and driven
8 away from his mother, driven down to Baytown. And we
9 know from Rudy that he wasn't crying. He wasn't saying
10 anything. Maybe he was confused or maybe he was just in
11 shock. Or maybe he spent the last 20 minutes of his
12 life really, really terrified. That's what I want you
13 to think about. Thank you.

14 THE COURT: Thank you, Mr. Wood.

15 Attorneys for the defense.

16 MR. MADRID: Thank you, Your Honor.

17 THE COURT: Mr. Madrid, you may proceed.

18 **DEFENSE CLOSING STATEMENT**

19 MR. MADRID: Good morning.

20 JURORS: Good morning (in unison).

21 MR. MADRID: Y'all have sat here for the
22 last week listening to the evidence in the case. And
23 it's got to the point where after we speak with you, you
24 are going to go to the room that y'all have been going
25 to to take a break and where you meet every day and

1 you're going to sit down and deliberate and discuss the
2 evidence. Just a quick point on the charge. You are
3 going to get the charge. And it can be confusing to sit
4 there and listen to 26 pages read to you. I just want
5 to make a quick note on that regarding the
6 lesser-includes of aggravated kidnapping and murder.

7 In this case, we don't concede anything.
8 The idea that you can't consider or it's not going to be
9 that relevant to you that you could consider an
10 aggravated kidnapping or murder, I mean, if we were to
11 flip the script on this and Rudy was in this case and
12 the State -- the story that the State wants you to
13 believe, Rudy wouldn't be guilty of murder because he
14 was just a lookout. You could say he was guilty of
15 kidnapping or aggravated kidnapping because he was a
16 lookout, right? And then he abandoned or he was under
17 duress or whatever he is saying. And that's an example
18 of somebody guilty of aggravated kidnapping and not
19 murder or capital murder.

20 And I want to bring that up to you because
21 the charge is important, the charge against Obel
22 Cruz-Garcia is important for the lesser-includes. The
23 Judge wouldn't put them in there if they didn't mean
24 anything.

25 The second point I want to make, I want to

1 ask each one of y'all when you go back there and you
2 deliberate, you -- each of you are going to have a
3 verdict. Obviously, you're going to come together or
4 not come together, but in a case like this, you saw the
5 picture that Mr. Wood put up of Baby Angelo. And I'm
6 sure during closing you might see it again. And there
7 is pressure because of this little boy, this innocent
8 little boy. And there is nobody in this courtroom that
9 would -- that doesn't feel that or know that emotion,
10 but I don't want that emotion to play a part into being
11 pressured into a verdict. Because the verdict has to be
12 based on the evidence. So, I want you to consider those
13 things.

14 As to the evidence, if you will remember,
15 this case started a week ago. Mr. Wood came up here and
16 gave a compelling and a dramatic opening. It was really
17 good. He said something to the effect: It was November
18 5th, 1992 and it had been 36 days since Baby Angelo went
19 mix. Y'all remember that? And it was a great
20 technique. It's like in a movie where you have the
21 opening scene and then you flash back. And you have
22 these characters, the grieving mother. And you probably
23 had a vision in your mind of the grieving mother. You
24 probably didn't have a vision that these were drug
25 dealers that didn't even tell the police who possibly

1 could have taken their son.

2 And then you have the character with the
3 bought of conscious. After all these years, just had to
4 come clean. And he was so scared out there that he
5 defecated in his pants. You remember that? He didn't
6 even testify to that. He might be full of crap, but he
7 did not defecate in his pant. He came up here and told
8 a bunch of lies. But what the State wanted you to do,
9 what they wanted you to do at the end here with the
10 picture of Baby Angelo, is to feel that emotion. But a
11 conviction for any case, and for capital murder, can't
12 be based on that. It has to be based on more than that.

13 Now, I'm sure they'll tell you: Yeah, we
14 have evidence, we have DNA, and we have medical, and we
15 have witnesses, but did they really? Did they really?
16 I mean, they had a medical autopsy report that was one
17 page long. Okay. And because of the condition that the
18 remains were found, you know, they kind of used that as
19 an excuse to say: Hey, we can't really prove up the
20 cause of death. It was a sharp instrument and an
21 unknown object.

22 But the bones, if you remember on
23 cross-examination, there aren't any marks on the bones
24 and there isn't any proof of that. You might say:
25 Well, yeah, because of the elements and all these

1 things, but you can't give the State a pass. They have
2 to prove the case. You can't just say: Oh, well, the
3 evidence isn't there because such and such. The
4 evidence is either there or it's not there. And if it
5 is not there, that is a reasonable doubt.

6 The DNA didn't prove anything. The DNA --
7 you remember there was a cigar, State's 32? And the
8 cigar doesn't prove that Obel Cruz-Garcia was there at
9 the apartment. And if you remember, these people were
10 all friends. Even Diana Garcia said that he was there
11 that day. And it's kind of an absurd story. Think
12 about this cigar and a man coming in with a gun and a
13 ski mask on with a cigar. It's absurd. I don't think
14 people rob people like that. He was there earlier that
15 day and it's very conceivable he left it there. It
16 doesn't prove anything.

17 Rudy even said: We were like family. It
18 makes sense that the cigar was there, just as if you
19 were a smoker and you had an ashtray at somebody's house
20 and you left your cigarette. It doesn't prove anything.
21 The State will tell you: Well, there was the vaginal
22 swabs and the panties. Again, it doesn't prove a sexual
23 assault. It may prove sexual relations. It doesn't
24 prove -- there wasn't -- you don't hear the SANE nurse
25 come in and talk about any kind of physical force or

1 tearing, anything that happened to Diana Garcia. There
2 was DNA from her husband. Nobody is saying he raped
3 her. It's conceivable there was sexual relations
4 between the two. There is nothing to show that. There
5 is nothing to show what happened to the DNA for 15 years
6 if there was a third party and somebody had committed a
7 sexual assault. We know that the DNA was in the Houston
8 Crime Lab for 15 years and we know nothing else. That's
9 all that we know about that. DNA doesn't prove
10 anything.

11 But where the State started their case was,
12 they had a 911 tape. Again, that doesn't say anything
13 about a sexual assault. And then Sergeant Devereaux.
14 And Sergeant Devereaux -- and it is very important when
15 somebody takes a little boy to identify who took this
16 little boy. Now, nobody identified this man. Okay?
17 And who they identified was two black males. And this
18 is not a black male. There was a distinction that was
19 tried -- that Sergeant Elliott, after all these years,
20 tried to make. He tried to tell you in 1992 in Houston,
21 Texas we didn't know the difference -- we only knew
22 white, black, and Asian. We didn't know the difference.

23 MS. TISE: Objection. That
24 mischaracterizes Sergeant Elliott's testimony.

25 THE COURT: Members of the jury, you will

1 be reminded that the arguments of counsel are not
2 evidence and you will recall and rely on the testimony
3 from the witness stand in your deliberations. That's
4 overruled.

5 MR. MADRID: So, you will remember that he
6 discussed this. And the reason it's important is, well,
7 there was people with HPD, U.P. Hernandez and Sergeant
8 Devereaux, that said: Yeah, there is identifiers for
9 those things. And the reason it is important is because
10 it was identified as two black males. Okay? Now, one
11 was a tall black male. Deputy Perry is a tall black
12 male. And so, we know -- this is common since. You can
13 think of: What is a tall black male? Because you are
14 looking for these people. It's important.

15 And the other distinction is what language
16 did they speak. And somehow we didn't know that maybe
17 people from the Dominican Republic or Puerto Rico spoke
18 Spanish but were African descent in 1992. This wasn't
19 in 1892. This was 1992. It's an absurd statement to
20 make.

21 Arturo, if you remember, he said -- he told
22 U.P. Hernandez -- he spoke about a black man. And he
23 was saying he spoke English. Diana Garcia Hernandez
24 said they didn't speak English or Spanish. The
25 importance about this is Diana and Arturo, they dealt

1 drugs and they dealt with the Dominicans and Puerto
2 Ricans. Arturo spoke Spanish. He came up here with an
3 interpreter. He would know the difference between an
4 accent of somebody from the islands, from Puerto Rico,
5 or Dominican, and somebody from his country of Mexico.
6 He would know the difference.

7 So, this whole argument about, well, we
8 weren't sure if they were two African-American males or
9 someone of African descent that spoke Spanish. It
10 doesn't really make sense because these people, who were
11 close friends and were dealing drugs, they dealt with
12 Puerto Ricans and they dealt with Dominicans who could
13 be people of African descent that spoke Spanish. They
14 would know the difference in accents and would know what
15 they looked like.

16 The reason it's important is the State
17 wants you to find this man guilty and he was never
18 identified, but two black males were. Two black males
19 that spoke English. And if you take it a step further
20 and you say: Well, somehow in this scenario that they
21 gave, the second person that came and didn't even
22 speak -- which I didn't really understand, but they want
23 you to believe that one man came and spoke and the other
24 guy didn't speak.

25 But even in that scenario, the one man that

1 spoke, spoke English. And if he spoke English, he spoke
2 like a black male, that doesn't really make sense.
3 There was no -- there was not any testimony at all that
4 those were people that Obel Cruz-Garcia was dealing
5 with. They really -- they can't put him in the room.
6 The other distinction they made were these masks. There
7 was two masks. And Rudy said that one of the -- that
8 they used pantyhose, which is another absurdity,
9 pantyhose and a cigar, if you want to believe their
10 story. They had these pantyhose on their head and they
11 made a hole in the mouth or they were just regular
12 masks, but that's the importance of identifying people.

13 As to Diana and Arturo, remember they were
14 the first people -- they were the people that called the
15 police. There is one thing that the State really can't
16 answer, and not anybody answered here, is that these
17 people were friends. Okay? And Obel Cruz-Garcia, he
18 supplied them with drugs. He didn't have any reason to
19 steal drugs from them or steal money from them or take
20 their child or sexually assault Diana Garcia. It
21 doesn't really make sense.

22 Rudy did, Carmelo Santana Martinez. And
23 I'll get to that. He had a motive to do this, but this
24 man didn't have a motive to do that. These were people
25 that helped him make money and these were friends. He

1 was there that day. He wasn't there fighting that day.
2 Diana Garcia said he was there earlier that day. But
3 getting back to the idea that it's not a stretch -- and
4 I don't get up here or take pleasure in trying to -- and
5 I'm not doing that. And I don't want you to hold this
6 against my client and think I'm trying to disparage
7 Diana Garcia. Say that, hey, she was with this man, but
8 I don't think that's consulting in any way. Things
9 happen in marriages. She was married to a man and then
10 she left that man for Arturo. I don't have a problem
11 with that. They have been together for 20 years or
12 something. So, it's conceivable that this happened.

13 What doesn't really make sense is that if
14 you look at State's 42, it's a lease, does it really
15 make sense to you that -- she said they were good enough
16 friends that she cosigned. And it says: This apartment
17 will be occupied by residents and Diana Garcia only.
18 The reason -- who is to tell you she hadn't been over
19 there? She told you she was over there. It was an
20 important testimony that I think could have gotten lost
21 during cross-examination. Have you ever been over
22 there? And if you remember -- it's either "yes" or
23 "no," it's not a big deal. You could see her sitting
24 there and thinking. She said: Just that one time. I'm
25 not sure what happened that one time. I know she's one

1 of the people that could be there. I know she was there
2 without her husband. And I know it's not a stretch that
3 it could have happened.

4 I also know that her husband said that he
5 didn't remember that Obel was there that day. Okay?
6 Now, Angelo Garcia, Jr. likely was not there in
7 September. It was most likely a school day. So, the
8 son was away. I mean, her husband didn't even know that
9 this man was there. So, could have something happened?
10 Certainly.

11 Something else that I thought was real
12 important regarding that line. Arturo was asked --
13 first he said: Well, this is the man that raped my
14 wife. And shortly after he was asked: Did they ever
15 date? Do you remember that? Did they ever date? Can
16 you imagine that? Somebody rapes your wife and you are
17 asked: Did they ever date? I would be coming out of my
18 chair. But he didn't. It didn't phase him. It's a
19 pretty insulting question, but one that has to be asked.
20 And all he said was -- he did that pause too. He said:
21 Not that I know of. Not that I know of. Don't think
22 that something wasn't going on there.

23 And when we're talking about two black
24 males, there was another very important question that
25 was asked during cross-examination. Did you know -- you

1 will remember there was Alice Lemone, who was your
2 neighbor, who said -- she said you were arguing with two
3 black males earlier that day when you were down by the
4 store. And he paused and he thought and he said: I
5 don't remember.

6 Don't you think he'd remember that? This
7 little boy was taken. And you would start to think:
8 Who could have done this? Who could have taken him? He
9 told the police all along: We don't have any enemies, I
10 don't know who could have done this. And he would say:
11 No, I didn't have -- anybody would say: No, I didn't
12 argue with two black males because there was -- the
13 original description was two black males and he was
14 asked a question and -- if somebody else had seen him
15 arguing with two black males. Not that I remember. You
16 better believe you are going remember "yes" or "no."
17 And those kinds of answers lessen his credibility.

18 He also -- another big point during both of
19 their testimonies: If anybody else could have done
20 this, who could have done this? Right? You remember
21 about a month before, a month or so before at their old
22 apartment somebody broke into their apartment. And at
23 first, Diana didn't want to be forthcoming, but she
24 thought about it and said: Yes, they took drugs and
25 money.

1 Does that sound familiar? Because they
2 took drugs and money in this case, too. About a month
3 before, somebody broke into their apartment and took
4 drugs and money. You asked Arturo and you remember what
5 he -- they took a hat. He couldn't even remember the
6 drugs and money. They took a hat from him.

7 And why is that important? Because they
8 were dealing drugs and somebody ransacked -- you could
9 look through the pictures -- their apartment that night,
10 and what do you think they were looking for? They were
11 looking for drugs and money. And there were likely
12 other people -- there were likely other people who would
13 have a reason to steal from them. Obel didn't.

14 Now, you would think back in 1992 when this
15 happened that you would be telling the police: You
16 know, I think Obel did it because he was mad at me
17 because of such and such. Now, you have Sergeant
18 Devereaux, Investigators U.P. Hernandez and Elliott --
19 and I'm probably missing another -- and they said they
20 had a host of others. Not one person came to testify
21 and said that Diana said that it must be Obel because he
22 was mad at me for whatever reason. There was never any
23 testimony of that. She never even said it. You know
24 when she decided that Obel Garcia did this was in 2008
25 when Sergeant Mel came to her and said: Hey, we got a

1 DNA hit on this. Well, she had to say it then because
2 that revealed the relationship she never told her
3 husband about, but you would think all those years she
4 would have told somebody. And she never did. Because
5 she never believed it. And because there was no reason
6 for Obel to do this. He gained nothing from this.

7 There was one other witness that was put up
8 here shortly, Linda Hernandez. And she said something
9 that was very telling and it was about Rudy, if you
10 remember during cross-examination. And what she said
11 about Rudy was that she didn't trust him. And her
12 mother didn't trust him. And she got a bad vibe from
13 him. But why? He was always asking to take my little
14 boy to the store. Doesn't that sound familiar? Why
15 would this man want to take her little boy? And she
16 felt uncomfortable about that. And she wouldn't allow
17 that because she had that mother's intuition. Because
18 we know as parents and -- we want to protect our
19 children and we know when somebody might harm your
20 child. If they were truly friends, she would say:
21 Yeah, you can take him, do whatever you want to do. But
22 she knew, she knew who Rudy was and she wouldn't allow
23 Rudy to go to the store with her son. Well, isn't that
24 familiar? Here we are with a kidnapping of a little boy
25 and Rudy was at the scene.

1 And then there is Angelita. Okay? She was
2 Obel Cruz-Garcia's wife in 1992. And she came up here
3 and said something. She came up here and said that
4 about two months after this happened, Obel confessed to
5 her. This was 1992. That's a big piece of evidence.
6 And I'm sure the State will talk to you about that. Why
7 are we even here if he confessed, right, in 1992?

8 Now, she was good friends with Diana
9 Garcia. She called her the next day. These were good
10 friends. Okay? Now, she might have been in the
11 Dominican Republic a couple of months after, but we know
12 she came back. She testified that she's been married,
13 she's been living in Houston, she has grown children. I
14 think she's been married around 15 years. There wasn't
15 one officer that came up here and testified and said:
16 Yeah, she told -- and you remember, she had a lawyer
17 from day one and she met with the police multiple times.
18 There is not one person that came up here and said:
19 Yeah, she told us that Obel told -- because you would
20 have heard it. If she would have ever told anybody, you
21 would have heard this. You would have heard it.

22 Why would she have done it all these years?
23 I tell you one reason. One reason why is because she
24 absolutely hates this man. Like many ex-wives would.
25 Not only is -- because that's her ex-husband, but he

1 completely bailed out on her. Okay? From one day to
2 the next, he left. He left some rent money and left,
3 didn't see her ever again until she came to see him.
4 She claims she went to see him in the Dominican
5 Republic. There's no proof of that either. She has
6 great a dislike for him.

7 And the other reason is because of Rudy.
8 Remember Rudy is her close cousin. When they came here
9 in the late 80s, it was with Rudy who came and brought
10 them. Rudy got them in the drug trade. You remember
11 she diminished her role in that and blamed it on all
12 Obel. They were here from the late 80s to 1992 dealing
13 drugs for three or four or five years. She wants to
14 diminished that. He bailed on her. And what happened
15 to her? Rudy told us she went to prison for a drug
16 conviction. Okay? Don't you think she's going to be
17 angry at him? He ran, he took off. The way she saw it,
18 he ran and she gets stuck with the drug charge. She
19 ends up doing a couple of years. Of course she dislikes
20 him. And, of course, she's going to protect her cousin.
21 Because you remember her cousin, who is not a very good
22 guy, and he came up here and testified, Rudy. If you
23 remember, when she was asked: How is Rudy? Well, Rudy
24 is a good boy. Rudy is a good boy. You remember that?
25 Rudy is not a good boy. Rudy is sitting up in the

1 federal penitentiary in Pennsylvania. He is not a good
2 boy. Rudy is a liar and he's self-serving. And so now
3 we get to Rudy. And the State told you, through their
4 witnesses -- and I'm sure they'll get up here and tell
5 you again. Rudy never had a deal. We never offered him
6 anything. They didn't. They didn't even charge him.
7 Give me a break. There was nothing to offer him. There
8 was no, hey, we're going to give you 30 years instead of
9 capital murder, we're going to drop this down to an
10 aggravated assault, or just a kidnapping. Of course,
11 there is no deal. There's not even a charge. He got
12 the best deal. And he told you that he is getting out
13 soon. Okay?

14 And so, when the FBI went to talk to him,
15 they told him: Hey, we got some DNA on Obel
16 Cruz-Garcia. We're charging him. And so, he starts
17 talking because he knows that he is coming. So, he
18 wants to get the heat off of him and he points it all to
19 this man. He never gets charged. It worked, it worked
20 completely. Okay? Because he hasn't been charged. He
21 didn't get a deal. He didn't get charged. He didn't
22 even get charged. At the very least, reading that
23 charge the law -- the Judge is going to give you, at the
24 very least he's guilty of aggravated kidnapping because
25 when he went there, he had an idea that something was

1 going to go on. He was behind the wheel. He may have
2 not driven off, according to his testimony, but he was
3 at least the lookout and the get-away driver. He wasn't
4 even charged with that.

5 So, this is it. He wasn't offered
6 anything, he wasn't charged with anything. He has an
7 incredible motive to lie. He comes up here and says he
8 just wanted to -- he wants to give -- something about
9 the American justice system and do the right thing. He
10 wants to go home. He wants to go back to the Dominican
11 Republic. And he's going to get his wish soon.

12 Now, what was he charged with? You
13 remember? His whole idea, his whole perception of what
14 he said is he was some -- pushed aside by this man. He
15 was pushed aside. And he kind of portray himself as
16 this weak character. Somehow he didn't -- it just
17 didn't make sense. You remember he said: Well, what we
18 usually did is we went and took masks. He described
19 what they usually did. And that doesn't match his
20 testimony of being pushed to the side. The idea that he
21 didn't have a gun or weapon that night doesn't make
22 sense. They went to go do a home invasion robbery.

23 But now, remember why he was in prison.
24 Okay? Why is he in prison? It's not like he went away
25 and he didn't know how to do anything. Within five

1 years, he got a 17-year sentence that included what?
2 Drugs and money. Okay? And he wasn't dealing some dime
3 bag. He is doing 17 years in the federal penitentiary
4 for drugs and money. Does that sound familiar to
5 anybody? This case is about drugs and money and the
6 little boy. And he had all of those elements. He was
7 asking for this other little boy and whose mother was
8 creeped out by him. He goes to prison for drugs and
9 money. And that's what this case is about.

10 The State will tell you, you know, when he
11 changed his story, he didn't have all the same story as
12 the FBI agent. The time passes. And you remember they
13 tried to show you a statement -- somehow discredit their
14 own witness and showed you a statement and say: Well,
15 this is his actual statement. If you want to admit it,
16 admit it. There wasn't anybody on this side of the
17 table --

18 MS. TISE: Objection, Your Honor. Counsel
19 knows you can't admit the statement into evidence.

20 THE COURT: Stay within the evidence.

21 MR. MADRID: You saw what you saw there.
22 And you heard. The agent had no reason to come up here
23 and make up some story. One thing that was important
24 about his description was: Why would Rudy know all
25 these facts? Rudy would know them because he was there.

1 Why would he know Baytown? Because he sold drugs there.
2 That's what he told the agent. He knew that already.
3 He even said during his testimony, although he tried to
4 change it, was that he was neighbors with Diana out
5 there. So, he had every reason to do this.

6 The other thing that he had is he felt
7 pushed to the edges. And he felt that Obel Cruz-Garcia
8 had taken over, according to him. Obel Cruz-Garcia has
9 no reason to do this, but doesn't Rudy? Doesn't Rudy
10 have a motive to go in there and take the drugs and the
11 money that Obel Cruz-Garcia was supplying? Doesn't it
12 make a lot more sense that Rudy did this? He was there.
13 It doesn't make sense that he went out there and this
14 innocent little boy was killed and he somehow went in
15 the other direction. That's just -- nobody -- you just
16 can't buy that. Things don't happen like that. He just
17 said some ridiculous things.

18 Remember they went in there -- his story
19 differs than the two guns, a gun and a knife. And
20 according to his story -- and this is a ridiculous
21 story. After the killing, you've got Rogelio in the
22 front seat and Obel, I assume, driving, and Rudy in the
23 back seat. And somehow he says that Obel told him to
24 throw the knife away. So, you would have Rogelio, who
25 had the knife, give the knife to Obel, who is driving,

1 to give the knife to Rudy. That's --

2 MS. TISE: Objection. That
3 mischaracterizes the testimony of the witnesses as to
4 where everyone was seated in the vehicle.

5 THE COURT: Okay. And I'll remind the
6 jury: You will recall and rely on the testimony from
7 the witness stand in your deliberations. I'll remind
8 you that argument of counsel are not evidence.

9 MR. MADRID: The idea that the -- wherever
10 anybody was seated, it had to go through three hands to
11 be tossed is absurd. And it just shows you that his
12 story isn't credible.

13 You ask: Why would Obel just leave? That
14 makes him guilty, right, because he left? Well, I will
15 tell you. You can surmise, you can deduce that when he
16 found out that the police were crawling all over that
17 place and he's selling the drugs there, it's a good idea
18 to get out of there. Because he is going to go down for
19 something. Not murder, not kidnapping, not capital
20 murder, but a drug case. Just like his wife ended up
21 getting and going to prison for. There is reason he
22 would leave. There is a reason Rudy would do this.

23 You know, at the end of the day, the
24 evidence is clear the State also not proven their case
25 beyond a reasonable doubt. And there is plenty of

1 examples that I've explained to you. I don't think the
2 State is up here trying to do something wrong. These
3 people work hard and the investigators and detectives
4 work hard, but you have to send them a message to get
5 the right person. They have the right person in their
6 hands. The right person is Rudy. The right person is
7 Rogelio. Remember, he was one that was out there. But
8 it would be injustice to find this man guilty based on
9 lies, based on drug dealers, based on self-serving
10 convicts. That doesn't get you there. It doesn't get
11 you to guilty of capital murder.

12 So, I'm asking you on behalf of my client,
13 Obel Cruz-Garcia, to find him not guilty.

14 And at this time, I'm going to turn it over
15 to Mr. Skip Cornelius and he'll have a few minutes to
16 talk to you.

17 THE COURT: Thank you, Mr. Madrid.

18 Mr. Cornelius, you may proceed.

19 MR. CORNELIUS: Judge, how much time do I
20 have?

21 THE COURT: He used 27 minutes. So, you
22 have the remainder of the hour. So, 33.

23 MR. CORNELIUS: Okay. I'm not going to
24 take 33 minutes. Two lawyers down, two to go. I'll
25 probably be the shortest.

1 I say that to you because I bet that all of
2 you can predict exactly what the defense lawyers are
3 going to say and what the State's lawyers are going to
4 say. I've always thought of the jury as an organism in
5 some of its parts. And I'm also profoundly impressed by
6 the fact that juries catch everything and they remember
7 everything. It amazing how many times I find out that
8 the jury caught something I didn't catch in the
9 testimony, almost in every trial. And why wouldn't that
10 be true? You're twelve times as smart as I am, you have
11 twelve times as much as memory, and twelve times more
12 capacity to figure things out in a case. So, it's not
13 unusual.

14 I'm not going to go into a bunch of
15 details. Let me comment for a moment on the mumbo-jumbo
16 comment that is our Court's charge here. It is
17 complicated. The reason it's complicated is not to make
18 it mumbo-jumbo, which is not what Mr. Wood meant. He
19 didn't mean anything offensive by that, but it's not
20 mumbo-jumbo. It's complicated because it's very
21 complicated what they have to prove. There are specific
22 things they have to prove. And if they don't prove them
23 to you beyond a reasonable doubt, your sworn duty is to
24 return a verdict of not guilty. And I'm sure you will
25 do that. If they were not proven to you beyond a

1 reasonable doubt, I'm sure you will follow your oath,
2 but it's not mumbo-jumbo. It's just specifically
3 applying to these facts what they have to prove.

4 And the lessers in there are there because
5 you might have, hypothetically, a reasonable doubt on
6 part of the case and not a reasonable doubt on the other
7 part of the case. So, I don't know what you are going
8 to decide, you know. And I have to tell you, I don't
9 know what happened. I wasn't there. The State wasn't
10 there. You weren't there. It's a tough decision to try
11 to reconstruct beyond a reasonable doubt what happened.
12 It's hard to do. You-all said you wouldn't give them
13 extra credit because of the time or because of what they
14 don't have. They either have it or they don't have it.

15 In 1992, something happened. Back in
16 September of 1992, something happened and it probably
17 involved drugs and money, but I'll bet it's a far cry
18 from the story you have been told. Police came out to
19 investigate. U.P. Hernandez was assigned to help
20 because of his language skills. And at the end of the
21 first part of the investigation, they were looking for
22 two black males. 1992. The testimony is that they had,
23 as a part of their official police report, a section
24 where they had descriptors. And Sergeant Elliott said
25 he is the one who filled them out. White, black,

1 Hispanic, and other, which could include Asian or
2 whatever else they might want to put down. That's the
3 testimony. They put down two black males. One large
4 and tall with an accent. They put down not Hispanic.
5 Two black males.

6 MS. TISE: Objection. Mischaracterizes the
7 testimony of the witness.

8 THE COURT: Once again, you are going to
9 recall the testimony from the witness stand and rely on
10 that in your deliberations. This is argument of counsel
11 and not evidence.

12 MR. CORNELIUS: My recollection of the
13 testimony is that there were boxes and they put -- they
14 checked the box for black males and put an "N" in the
15 box for Hispanics.

16 So, at the end of the day, they are looking
17 for two black males. Now, the man that they had stand
18 up over there was not tall, he was not large, and he was
19 not a black male. In 1992, I think everyone knew that
20 referred to people of African descent as black, even
21 though they weren't necessarily the color black. These
22 descriptors were for race, not for the skin tone. Black
23 man or black male was the race, not the skin tone
24 because we knew back then and we know now that people of
25 African descent can be very dark-skinned, very

1 light-skinned, and medium.

2 The fact that they're of African descent or
3 a black person doesn't tell you what color their skin
4 is. Hispanics can be very dark, very light, and
5 everything in between. This was two black men. We knew
6 in 1992 that there were people of African descent who
7 spoke Spanish who were from Spanish-speaking Places.
8 U.P. Hernandez said what he was told was the man that
9 had the accent not Mexican, not white, a black man.

10 So, we rock along for 15 years and then
11 they get this DNA, which I will talk about in a moment,
12 and they go and they tell Diana Garcia: We've got what
13 we believe is a DNA case on Obel Cruz-Garcia. All of a
14 sudden, it's not a black man anymore. It's Obel
15 Cruz-Garcia. And they have -- they're stuck with the
16 problem of how do they explain away this black man box
17 checked on the police report. So, we have this adoption
18 of the if their color is darker than mine, I call them
19 black. And Sergeant Elliott is saying he understood
20 that they meant it was somebody with a color darker than
21 theirs. He never wrote that in the report anywhere. No
22 one has said that that's ever been written down ever
23 anywhere or recorded in any way.

24 MS. TISE: Objection. Mischaracterizes the
25 testimony of Sergeant Elliott.

1 THE COURT: That will be overruled. Once
2 again, you're reminded that arguments of counsel is not
3 evidence.

4 MR. CORNELIUS: I will settle for however
5 you remember it.

6 Okay. That's a first big hurdle that the
7 jury will have to get over. It jumps from two black
8 men, one large, tall, with an accent, to anybody with
9 darker skin than Diana or Arturo. And those people are
10 all black.

11 Okay. Arturo. Couple of quick things.
12 Never told U.P. Hernandez the truth. U.P. Hernandez
13 testified emphatically: He never told me that he was
14 dealing drugs. The truth. Never told him. He told
15 you, Arturo told you he told -- he told he was talking
16 to U.P. Hernandez and he said he told the truth, but he
17 didn't according to U.P. Hernandez. Who are you going
18 to believe? I said at the start: How much credibility
19 are you going to give to two self-admitted drug dealers
20 and liars or U.P. Hernandez?

21 The injuries to his head. Diana said that
22 while she was being sexually assaulted, he was being
23 beat, beat, beat. Went on to describe how long the
24 sexual assault was and how he was being beaten the whole
25 time. This man had an injury, no doubt, but there is

1 not even the breath of testimony to establish that he
2 had even a band-aid put on that injury, much less a
3 suture or a bandage. And the picture in here of the
4 pillowcase with a little blood on it. Remember the
5 testimony was: Oh, he was covered with blood. He was
6 bleeding everywhere.

7 I will bet everyone on -- that little
8 amount of blood, sad for anybody to bleed, but that
9 wouldn't even be a good nose bleed. I'm sure that
10 everybody here, and if you hadn't had it yourself,
11 you've seen a nose bleed that had more blood than that.

12 Diana's testimony. Two black males.
13 Nothing about a Spanish-speaking black male or a
14 dark-skinned Hispanic. Two black males, is what they
15 got from her.

16 So, now the issue with Diana. Was she
17 sexually assaulted or not? And we have to look to a
18 couple of things. The first thing is this very
19 specialized skilled and trained RN, who was an expert.
20 Not just a nurse, but an expert nurse on doing rape
21 kits, on looking for things to see if someone has been
22 sexually assaulted. Not a mark on her to support her
23 statement that she was sexually assaulted. It doesn't
24 mean she wasn't sexually assaulted. I understand that.
25 I understand there could be a case where a woman could

1 be sexually assaulted and leave no marks. I understand
2 that. And I'm not going to go into why there would be
3 marks and why there could be a situation where there
4 wasn't, but I'm also not going to discuss what their
5 evidence is not either.

6 Her testimony either supports that it's a
7 sexual assault or it doesn't. And it doesn't. It
8 doesn't support it. The medical evidence to establish
9 that she was sexually assaulted is a wash. There is no
10 physical evidence that she was forcibly sexually
11 assaulted as she told you.

12 The DNA. That DNA lasted for 15 years. If
13 you believe the DNA -- and before you believe it -- I
14 will cover this first. There is a hole in this case for
15 15 years. The cigar was collected, the rape kit was
16 done, and then what was done with it? There's not
17 anyone that's come from the HPD Crime Lab to tell you
18 what was done with it. Was it tested? Was it not
19 tested? How was it stored? Who stored it? Who checked
20 it out? What was done with it?

21 We have Sergeant Mehl, who went 15 years
22 later to pick it up, and it looked pretty good, it was
23 packaged pretty good. That's it. That's the only
24 explanation. Not a record, not a document, not a
25 witness, nothing to explain to you what was done with

1 that DNA evidence for 15 years. The one thing we do
2 know is it lasted 15 years. We don't know what the
3 quality control was. We don't know what systems were in
4 place there to make you believe it, that it's a good
5 test. We just don't know because there is no evidence
6 of it.

7 But we know that those sperm cells lasted
8 15 years. You think they could last a few hours before
9 that night? That sometime that day -- I mean, the point
10 is, this DNA evidence doesn't tell you when those sperm
11 cells were deposited or under the circumstances that
12 they were deposited. It just doesn't -- it just doesn't
13 corroborate her testimony. It doesn't prove that she
14 was sexually assaulted. We will get to Rudy.

15 Now I want to talk to you a little more
16 about the charge here for a quick second. This is not
17 mumbo-jumbo, either. You are charged and instructed --
18 the Judge has to do it -- that if there is any witness
19 that testifies that has had a conviction within the last
20 ten years that's a felony, the Judge has to instruct you
21 why that's admissible. It's admissible because the law
22 requires that you know that so that you can decide
23 whether you will believe that witness or not. Because
24 felons are not honest.

25 Rudy is not a nice guy. I mean, he got

1 twelve years. He said he got convicted of a drug case.
2 And if there had been no cross-examination, you would
3 have thought he had a drug case. He was up in
4 Pennsylvania in federal prison, just a drug case. It
5 wasn't just a drug case. He got twelve years and seven
6 months for that drug case. And because a gun was used
7 in the drug case, got another five years stacked on top
8 of that. He is not a nice guy. You are entitled to
9 know that to decide if you are going to believe what
10 Rudy has said to you. You are going to have to wrestle
11 with, are you willing to base a capital murder
12 conviction on a convicted felon, somebody like Rudy? I
13 doubt it.

14 So, you've got a charge on that. It's not
15 mumbo-jumbo. It's what the law is. I mean, it took all
16 day to prepare that charge. I'm sorry, but it's the
17 handiwork of a whole lot of lawyers -- not just these
18 lawyers -- and a whole lot of judges -- not just this
19 judge -- working on the law to put it all out there for
20 you so that you know what you have to believe beyond a
21 reasonable doubt and what you are to consider under the
22 law.

23 Rudy, the great humanitarian. Another part
24 of that charge is the accomplice witness rule. It says
25 as it relate it Rudy, since he is, by his own admission

1 an accomplice, you cannot base a conviction on his
2 testimony standing alone. You can't do it. Even if you
3 believed him, you can't do it. The law says you've got
4 to take his evidence, set it aside, whether you
5 believe it or not, look to the other evidence and see if
6 there is other evidence that you believe that tends to
7 connect the defendant to the crime. You can't base it
8 on Rudy's testimony. You couldn't base it on two Rudys
9 or five Rudys or ten Rudys.

10 MS. TISE: Objection. The jury can base on
11 Rudy's testimony as long as they have anything that
12 tends to corroborate it.

13 MR. CORNELIUS: Okay. I will make that
14 clear.

15 You can't base it just on Rudy's testimony.
16 It has to be corroborated. That's why it's called the
17 accomplice witness rule. It has to be corroborated.
18 You couldn't base it solely on two Rudys or five Rudys
19 or ten Rudys. A verdict can't be based solely on the
20 accomplice witness. That's the law. It was the law
21 before I was born. None of this stuff is stuff that
22 I've made up or is especially in this charge for me or
23 for the defendant. This is the law. And they knew that
24 going in here.

25 Now, the medical examiner's testimony is

1 very important. You know, Mario Madrid started his
2 statement to you talking about how sad and tragic this
3 is and the picture of this poor little boy who is dead
4 now and it's horrible and there is no way that any
5 lawyer can ever make that right. It is horrible. But
6 just the fact that he's dead is not proof. It doesn't
7 prove who did it. And as I said in opening statement,
8 the greatest fear any lawyer has -- with this
9 responsibility would have is that you have this huge,
10 huge sympathy. This poor little boy is dead and the
11 State is pointing their finger at somebody and there is
12 this huge desire to just convict him. Don't look at the
13 evidence, don't work through the evidence. I don't
14 think you will do that, but I think you understand that
15 I'm afraid of that.

16 So, the medical examiner testimony. It's a
17 crying shame that all that was left were remains of that
18 boy, but I can't change that. I can't rewrite history
19 and I'm stuck with what the facts are. And the facts
20 are -- and, you know, I have the most profound respect
21 for Dr. Wolf. He's a wonderful man, but the facts are
22 he has not one single medical shred of evidence to
23 determine how this child died. Nothing. He told you
24 straight out his conclusion that it's a homicide is
25 based on what everybody told him, not on the autopsy.

1 There is nothing in the autopsy to suggest how this
2 child died. Not even drowning. I thought he might say:
3 Well, if the lungs are filled up with water, the person
4 drowned. Then I got to thinking about it, and there
5 could be another explanation for that. You know, there
6 could be. So, I understand why he said that. Not even
7 drowning. He can't say medically why this child died,
8 whether it was natural causes or how long he had been
9 dead, whether he was dead before he hit the water, died
10 in the water. He can't say it from a medical
11 standpoint.

12 So, all the hearsay that he's told -- he's
13 told the child was abducted. He didn't know the child
14 was abducted. He's told what Rudy said happened. He
15 doesn't know if that's true or not. But he's told these
16 things. Based on these things that he's told, he
17 concludes it's a homicide, but no medical proof. Here
18 why that is important to you. He either corroborates
19 Rudy's version or not. And he does not corroborate
20 Rudy's version.

21 Now, Rudy is pretty crafty, you know.
22 Imagine Rudy. He's in Pennsylvania. He is up there
23 about to be released on a 17-years, 17-month pretty
24 major drug conviction and pistol conviction. And the
25 FBI comes and they start to talk to him about a capital

1 murder case. Oh, my gosh. I thought I was getting out.
2 I don't know what's going to happen now. And he lies to
3 them and he says: I don't know anything about it. And
4 they continue with him. Nice young agent. Very
5 sincere, I thought. I don't know him, but I thought.
6 Probably pretty good at talking to people. But Rudy is
7 smart. He didn't talk Rudy into being the great
8 humanitarian that he wants you to believe he is. Rudy
9 was playing that and he saw an opening. Maybe if I just
10 tell them what I'm going to tell them, and, boy, I had
11 nothing to do with it, it's all this guy's fault. I
12 didn't do anything, it's all this guy's fault. And if I
13 can sell that story, maybe I will walk on this thing.
14 It worked so far.

15 But his story is not corroborated by the
16 medical examiner. It is -- that's why I stood here,
17 that's why I had Dr. Wolf come over here to show you all
18 the bones that are recovered and how unlikely, virtually
19 impossible it would be that this child was stabbed and
20 missed every single bone.

21 MS. TISE: Objection. Mischaracterizes the
22 testimony of Dr. Wolf.

23 THE COURT: I will remind the jury again
24 that the arguments of counsel are not evidence. And you
25 will recall and rely on the testimony from the witness

1 stand in your deliberations.

2 You may proceed.

3 MR. CORNELIUS: Well, I will abide by
4 however you remember the testimony. I believe the
5 testimony was that there was not a mark on any of those
6 bones that would indicate the child was stabbed. And I
7 did stand here and he did point to you where all the
8 bones were. And I'm telling you that I think it's
9 virtually impossible to have stabbed that child without
10 hitting one of those bones. And even if I didn't say
11 one word of that, are you -- you know, they put in their
12 indictment that the child was stabbed. They put it in
13 there. There's no evidence that child was stabbed.
14 They are going to change it now and say: Well, maybe
15 his throat was cut because that could be done without
16 hitting a bone.

17 MS. TISE: Objection, Your Honor.
18 Mischaracterizing the evidence in the case.

19 THE COURT: Stay within the evidence,
20 Mr. Cornelius.

21 MR. CORNELIUS: Yes, Your Honor. I'm
22 trying to do that.

23 But they haven't made that. Half of their
24 indictment they haven't made. I mean, there is no
25 evidence the child was stabbed. Not even Rudy says the

1 child was stabbed. He was kind of just leaving and
2 throwing that out there. Because, you know, he didn't
3 see what happened because he was over there defecating
4 in his pants. And he must have told Mr. Wood he
5 defecated in his pants. He didn't keep his story
6 straight from what he told them and what he told you.

7 And one of the most telling things about
8 Rudy is how do you forget that? He didn't tell the FBI
9 agent that. He had all this other time, all this other
10 time from 2011 to think about this. And in his
11 grandiose state, what a great person he is with this
12 great conscience, he's added to his story that he was
13 over defecating in his pants or on the ground while this
14 child was killed. That's not in his statement.

15 And for him to -- don't you know that the
16 FBI agent is smart enough to ask him about how he would
17 know how to get over there to Baytown? And he said:
18 Oh, I had friends and people I sold drugs to over there.
19 Did he tell you that? He told you not only that that's
20 not true, but he never said that to the FBI agent.
21 Remember when he told you that? If y'all believe Rudy
22 and base your verdict on Rudy, I have lost the case
23 before it ever started.

24 Okay. That's as far as I'm going to get
25 into the details. You've heard enough from me. Couple

1 of three things and I'm going to sit down, just general
2 things.

3 First of all, the State has the right,
4 because they have the burden of proof, to open the
5 arguments, which is very valuable. The first -- these
6 things are called arguments that we're doing, final
7 summation. They have the right to be the first voice to
8 speak to you and make that first impression and the last
9 voice to speak to you and make that last impression.
10 They have that very valuable -- those two very valuable
11 rights because they have the burden of proof. If they
12 don't convince you beyond a reasonable doubt, as you
13 know, your duty is to return a verdict of not guilty.
14 We don't have to convince you one way or the other.

15 Now, I hope you know me well enough to know
16 that if I could get back up after Ms. Tise, if the law
17 allowed me -- because she's going to be able to respond
18 to my argument, but I won't be able to respond to her's.
19 But I hope you know me well enough to know I could if I
20 had the opportunity. Would love to, but I don't have
21 that opportunity.

22 Now, two suggestions. And it's not this
23 case, it's not this jury. It's a suggestion I always
24 make. Be cognizant of the fact that everybody on this
25 jury has the same rights as everybody else. Everybody's

1 vote is just as important. Everybody's opinion is just
2 as important. Not even the foreman has any more
3 authority than anybody else on the jury. You are all
4 equal. Respect each other. You probably may not have
5 the same opinions on everything. Hear everybody out,
6 you know. Don't go back in there with your mind made
7 and I'm not changing my mind, no one could ever change
8 my mind. Don't do that. My suggestion is, don't do
9 that.

10 Go back in there and if you have an opinion
11 on things, you have an opinion. Share it if you want
12 to. You don't have to, but share it if you want to.
13 Listen to what everybody else's opinion is with an open
14 mind. But if at the end of the day, you have a
15 reasonable doubt and you've listened to what everybody
16 had to say and you are not convinced in your own heart
17 and in your own mind beyond a reasonable doubt, stick to
18 your verdict, the same as you would want anybody to
19 stick to their verdict for you or somebody you know and
20 love.

21 A lot of reasonable doubt in this case. We
22 ask you for a verdict of not guilty. Thank you.

23 THE COURT: Thank you, Mr. Cornelius.

24 Ms. Tise, you may proceed.

25 **STATE'S CLOSING STATEMENT**

1 MS. TISE: Thank you, Judge.

2 Ladies and gentlemen, I came here this
3 morning and I had some things prepared to say to you,
4 and all of that is gone. Because I want to respond to a
5 lot of things that you have been told here today. And
6 I'm going to forget some of them, so I want each of you
7 to remember the evidence that you heard. And when you
8 go back and think about some of the arguments that you
9 just heard, I want you to remember the part of the story
10 that they are leaving out because that's what you heard
11 so far.

12 I have to be, as a prosecutor, responsible
13 for the whole story, Justin and I. And that's why we go
14 last, because we're responsible for what's been
15 presented to you. Ladies and gentlemen, I'm not going
16 to stand here and tell you half-truths to try to get you
17 to come to a certain conclusion. I'm counting on you to
18 listen to the evidence. I'm counting on you to remind
19 your fellow jurors of everything that was said by the
20 witness, not just this much of it that helps the
21 defendant. And I'm going to give you a couple of
22 examples of what I'm talking about.

23 Dr. Wolf. Now, the defense has stood up
24 here this morning and made a big point about the fact
25 that those bones that you see in the autopsy that was

1 done on Angelo Garcia, Jr. don't show any injuries.
2 Wow, that must mean he is not guilty of capital murder.
3 I'm counting on you to remember the rest of what
4 Dr. Wolf said. Remember? There is a whole lot of bones
5 that aren't there and there are a whole lot of places
6 that that little boy could have been stabbed or cut that
7 we never know based on the bones that we have. Wow, why
8 weren't you told that part of the story? Well, because
9 that part of the story doesn't help the defendant.

10 I'm responsible for the whole story and you
11 hold me accountable. I will tell you the whole story.
12 And I'm not going to leave out and talk about half of
13 what a witness said and not talk about the whole thing,
14 I promise you that. That's not my job.

15 Let me give you another example, another
16 example of half the story. The SANE nurse. She came
17 here and she said: Well, there were no injuries. Wow,
18 that must mean Obel Cruz-Garcia is guilty -- is not
19 guilty of capital murder according to the defense
20 attorneys. No. Let's talk about what else the SANE
21 nurse said. And I want to say she said 95 percent -- it
22 was a very high percentage -- of rape cases that she
23 does SANE nurse examinations on --

24 MR. CORNELIUS: Objection. Outside the
25 record.

1 MS. TISE: -- do not have any injuries.

2 THE COURT: Overruled. But I will remind
3 the jury that you recall the testimony from the witness
4 stand and that is -- that will be your guide in your
5 deliberations. Arguments of counsel is not evidence.

6 MS. TISE: Let's hear the whole story, not
7 just isolate what parts of a witness said. Do it all
8 because it's all important. Those are just two
9 examples, ladies and gentlemen. And I hope to address
10 some more in the rest of my argument, but I want to talk
11 about a couple of other things that have come up here
12 today, some things that are pretty perplexing to me.
13 And the first one is, now all of sudden today, according
14 to Mr. Madrid, Rudy is the killer. He is one that has
15 all the motive and all of that stuff. Wow.

16 Well, let's look at the crime scene. Okay?
17 Let's think about that. We know that two masked men
18 went up into Diana Garcia's apartment that night, right?
19 Two. We know that the first one they saw, to the extent
20 that they could with the mask over his head. They saw
21 him. They saw that his skin on his arms was dark. They
22 could only see his features through the holes in the
23 mask. Not saying to you that they got to just gaze at
24 him for long periods of time, because they didn't. It
25 was a dark room, but they saw him. And he was tall and

1 he was a big man. That man was not Rudy. That's why I
2 got him off the stand and put him over here and brought
3 Roger out into the courtroom. Rudy is not dark-skinned.
4 Rudy is not tall. Rudy is someone that they know.

5 So, don't you know that when they heard
6 that man talking to them and said his accent was
7 strange, they would have known if it was Rudy. Rudy had
8 been to their house all the time. They were like
9 family. That man was not Rudy.

10 We know that the second man who came into
11 that apartment that night, the second man is the man who
12 raped Diana. Also, not Rudy, whose DNA was compared to
13 the rape kit and found not to match. Not Rudy. That
14 alone, ladies and gentlemen, corroborates what Rudy
15 said. Rudy didn't come up to the apartment that night.
16 He was down in the car, just like he said he was.

17 Ladies and gentlemen, if Obel Cruz-Garcia
18 was not the one, if his DNA was there from some
19 consensual sexual encounter that they made up out of
20 whole cloth -- and there is no evidence of that -- where
21 is the DNA of the guy who raped Diana? Where is it?
22 Why don't we have it? If at some unknown time Obel
23 Cruz-Garcia had a consensual relationship with Diana,
24 again, that there is no evidence of, where is the DNA of
25 the guy who raped her? She told you he ejaculated. And

1 I don't mean to be graphic, but she told you she felt it
2 running down her legs. Where is his DNA? His DNA is
3 not there because the person who raped Diana that night
4 is that man. And it's no mistake that his profile is
5 the major profile that was in her panties and it matched
6 the DNA on the cigar.

7 Ladies and gentlemen, their argument is a
8 straw man. It's a straw man because there is nothing
9 behind it. It is just a façade. There's no evidence of
10 it and it's not supported by the physical evidence at
11 the scene. And you don't have to believe Rudy. That's
12 just common sense. That's all it is.

13 The other thing that's a straw man is this
14 whole argument about two black men. I want you to think
15 really hard, because it got complicated about the
16 evidence that night and what Sergeant Elliott said.
17 Okay? Think about that real hard. Remember on
18 cross-examination how Mr. Cornelius was asking him and
19 asking him: You said two black men? And
20 Mr. -- Sergeant Elliott was saying: From the very
21 beginning, we knew we were looking for two dark
22 complected males, dark complected black Hispanics. That
23 was clear. This is --

24 MR. CORNELIUS: Judge, I'm going to object.
25 That's outside the record.

1 THE COURT: The jury will recall the
2 evidence from the witness stand and rely upon that in
3 your deliberations.

4 MS. TISE: And I will just remind you of
5 the exact moment in time when this happened. It was on
6 Mr. Cornelius' cross-examination: Where, Sergeant
7 Elliott? Where, where, where, where? Show me in your
8 report where you said that? And Sergeant Elliott very
9 calmly said: Right here in the suspect screen.
10 Remember that? Right here in the suspect screen.
11 That's where we put it. The suspects screen that was
12 filled out right after that very first night, is where
13 he documented that.

14 MR. CORNELIUS: That's outside the record,
15 Judge.

16 THE COURT: Once again, I'm going to tell
17 the jury that they recall the evidence from the witness
18 stand and they rely upon that in their deliberations.
19 Arguments of counsel are not evidence.

20 MS. TISE: And the officers were under no
21 misconceptions about that from that very night.
22 Mr. Cornelius' argument tries to suggest to you that
23 they came up with this whole black Hispanic thing in
24 2008 when the DNA came back. No, that's not what they
25 were doing. From the very beginning, the officers knew

1 they were looking for two black Hispanics. And I'm not
2 going to belabor the point that was made to you time and
3 time again from officers and Hispanic civilian
4 witnesses. That is a reference term that is common in
5 the Hispanic community for individuals from the central
6 American part of the country who have darker skin and
7 speak Spanish in a slightly different accent and much
8 more rapidly than normal Hispanics, Mexican Spanish that
9 we hear here in Texas.

10 You heard that time and time again. Again,
11 that's a straw man. Because, honestly, you are trying
12 to impeach witnesses based on their description of
13 someone who saw this much of someone's skin
14 (indicating). That's not what this is about. And I
15 hope that you don't spend your time in the jury room
16 trying to make Diana and Arturo look like a bunch of
17 liars because they saw this much of a person's arms and
18 described the person in the way that they know as
19 members of the Texas Hispanic community as black males.
20 I hope that's not what y'all think this case is about.
21 Please tell me that it's not, because it's too
22 important. That's a straw man, something to distract
23 you from what this case is about.

24 Ladies and gentlemen, this case is about a
25 6-year-old by the name Angelo Garcia, Jr. and the

1 horrible, horrible people who killed him. On October
2 1st, 1992, citizens in Harris County woke up to hear the
3 news of a shocking story that that 6-year-old boy was
4 asleep in his bed, in a place where 6-year-old boys
5 should be the safest, his home.

6 While he was sleeping, two masked men broke
7 the door down to his house, came in bearing guns, they
8 tied up and gagged and put a pillowcase over the head of
9 his stepfather and proceeded to pistol-whip him. Then
10 they raped his mother right there in front of him. And
11 I'm sorry, I know that Arturo may not remember -- he
12 doesn't remember that he passed out, although he told
13 U.P. Hernandez in his statement the very next day. I
14 think we can take what he said on October 1st, he passed
15 out just like Diana said he did. And he put that in his
16 statement on October 1st at 4:30 in the morning.

17 And Arturo may not remember Angelo's
18 screams because he was passed out, but I can tell you
19 that Diana Garcia remembers those screams. And I
20 guarantee you she hears it every day of her life. And I
21 guarantee you she'll never forget them. That's what
22 happened in that bedroom that night to that little boy,
23 he was snatched away. And on October 1st, 1992, we here
24 in Houston were hearing the story and no doubt people
25 were shocked. Because that doesn't happen every day.

1 It was about a month later when we turned
2 on our news channels again and we heard the
3 heartbreaking news of what had happened. We heard that
4 that little boy was found on a desolate, dirty, isolated
5 beach in Baytown, Texas. And all that was left of him
6 were his little bones and the tattered remains of those
7 Batman pajamas that he wore to bed that night.

8 You know, we know what happened to Angelo.
9 We know the story now. And I hope that after four days
10 of hearing the excruciating details of it, you've not
11 immuned yourself to the horror of it because it was
12 horrible, horrible.

13 Ladies and gentlemen, it goes against our
14 most basic instinct, which is to protect our children.
15 Whether you are a parent or not, we, as a society, have
16 that innate instinct to take care of those who can't
17 take care of themselves. And when someone will totally
18 throw that out the window and take the life of one our
19 children, we all take it personally. And you should.
20 Angelo Garcia, Jr. was that sweet little boy with
21 freckles on his nose and sky blue eyes. He was in the
22 first grade. He liked Batman, Spiderman, and Ninja
23 Turtles. He was excited because some neighbors had
24 given him a little picnic table that they had made and
25 he was outside with them. His mom was making tortillas

1 for the neighbors. Arturo was out there, hobnobbing
2 with the neighbors. This is what was going on in the
3 evening hours.

4 Angelo. Can't you see him? Rode in on his
5 little bike and dropped it carelessly at the front door,
6 as little boys do. And he very carefully took that
7 chain and locked it, but he didn't put it around the
8 post. That's Angelo. Angelo. Can't you just see him?
9 Can't you just see him running in the house excited
10 about those tortillas, throwing his shoes in the corner
11 of the closet?

12 Can't you just see him, ladies and
13 gentlemen, carried out of that apartment in the middle
14 of the night in the arms of that man? Carried like a
15 little lamb. And don't you know he wasn't quiet because
16 he felt like he was among friends? Don't you know?
17 Don't you know that he was quiet because he was
18 paralyzed by fear, because of what had just happened in
19 the apartment? Don't you know that's why Angelo was
20 quiet? Don't you know when they put him in the back
21 seat of the car and drove away with him, don't you know
22 what must have been going through his mind?

23 Ladies and gentlemen, what happened to
24 Angelo Garcia, Jr. is something that we, as a society,
25 can't fathom and can't tolerate.

1 Lots of officers put a lot of time into
2 this case, investigated it. You know that the feds were
3 involved. You know that many media stations were
4 putting out stories and putting it on "America's Most
5 Wanted." But, ultimately, the case went cold. And
6 Angelo Garcia became just a name on a list with
7 thousands of other cold cases that are unsolved in the
8 city of Houston. And that's too bad.

9 And there is a reason why that happened.
10 The reason was, as the officers told you, that Obel
11 Cruz-Garcia was the person that was their primary
12 suspect from absolutely the very beginning of the case
13 and he was gone. He was gone. That's why the case went
14 cold. It's not that they all of a sudden found out that
15 Obel Cruz-Garcia was a suspect in 2008 when they got the
16 DNA. They were looking for Obel Cruz-Garcia for years.
17 Eric Johnson talked about that. They had people in
18 Puerto Rico in very dangerous conditions looking
19 specifically for him. And he was gone.

20 Ladies and gentlemen, if it weren't for
21 Sergeant Eric Mehl and the fact that he reopened this
22 case, the defendant would have never been called into
23 this court to answer for what he did. And where did
24 Sergeant Mehl start? He started with the DNA.

25 Let's talk about the DNA evidence in this

1 case. There are lots of good reasons why Obel
2 Cruz-Garcia and his defense team want to discount the
3 DNA. Because it says if there is a 1 in quadrillion
4 chance that it's him -- those are some pretty steep
5 odds, Mr. Cruz-Garcia -- I think we can safely say it
6 had to be you. And I don't care about quality control.
7 Our expert witnesses told you that that evidence was
8 stored and it was in pristine condition. They retrieved
9 the cigar from the property room. Nobody had ever
10 thought to look at it until we learned what we can do
11 with epithelial cells years later. The sexual assault
12 kit was stored in an annex. It was in great condition
13 when they got it out. But no matter what, you cannot
14 contaminate evidence to put DNA there that wasn't there
15 before. That's just not possible. So, even if it
16 wasn't stored in the best of conditions, it's not going
17 to create a result that wouldn't have been there in the
18 first place.

19 And it's even more specific than that,
20 ladies and gentlemen. It's not going to put sperm cells
21 on the panties and the vaginal swabs that weren't there
22 to begin with. It's not going to happen. Ladies and
23 gentlemen, you can believe a crazy story if you want to.
24 You can believe, if you want, that Diana Garcia left her
25 20-year relationship and moved in with the love of her

1 life, who she is still with today, and her husband was
2 home -- and here is another half the story that you got.
3 She said if Obel Cruz-Garcia came by that day, he may
4 have, but he only dealt with Arturo. Remember that
5 second half that the defense didn't mention? She didn't
6 know why he was there. She didn't see him herself. He
7 was out there dealing with Arturo. Arturo was there.
8 Her son was there. They were out dealing with this
9 picnic table. She was making tortillas. And if you
10 think that somewhere in there she had consensual sex
11 with the defendant, who is her drug supplier and 15
12 years her junior, I think you're crazy. There is no
13 evidence of that. That didn't happen. It did not
14 happen. It comes to you with no evidence to support it.
15 Only because the DNA evidence is so strong, they've got
16 to come up with a way to explain it. And that's the
17 best they could do. Ladies and gentlemen, they can't
18 explain it. And on the DNA alone, you could convict the
19 defendant.

20 The talk about the jury charge being
21 complicated, the defense told you it's complicated
22 because that's how hard our burden is. No, ladies and
23 gentlemen. It's complicated because that's how many
24 choices you have of ways that you can convict this
25 defendant. You have a multitude of different choices

1 under which you can find him guilty. And you will
2 notice when you read the charge that between every
3 paragraph, that is delineated for you. Over and over
4 again the charge says: You can believe this string of
5 occurrences, or you can believe that string of
6 occurrences. It's all the different ways that you can
7 make him a party, and whether you believe he was stabbed
8 or whether you believe it was some other unknown
9 manner. Lots of ways. And that's why it's so long.
10 Those are choices.

11 I submit to you that you see at the very
12 best on Page 6 of the jury charge where the main choices
13 are laid out to you when it goes on into seven, where
14 the first choice is you can basically find that he did
15 it himself like Justin told you. You knew going in what
16 Rudy was going to say. We knew that the second choice
17 was really your best one. We ask you to find him guilty
18 as a party because what we believed happened is the
19 defendant directed and encouraged --

20 MR. CORNELIUS: Objection to putting
21 beliefs into the argument, Your Honor. It's improper.

22 THE COURT: That will be overruled.

23 MS. TISE: What the evidence supports is
24 that the defendant directed and encouraged Roger to kill
25 the little boy. And we also knew that -- well, Rudy

1 couldn't say how it happened. He didn't see the actual
2 event. You can use your common sense, like Dr. Wolf
3 does, and you can determine that from what Rudy said,
4 that maybe his throat was sliced, maybe he was stabbed.
5 Or, you can say: You know, we don't know, it's an
6 unknown manner and means. And all of that is perfectly
7 fine. And you-all don't have to agree on which way you
8 think it happened. Some of you may think one thing,
9 some of you may think another. And that's fine. He's
10 still guilty.

11 Ladies and gentlemen, the witnesses who
12 came here to talk to you are very important. You can
13 convict the defendant on his DNA alone because it ties
14 him to the sexual assault. And under the co-conspirator
15 option which you are given, if you believe he committed
16 the sexual assault, which is one felony, and another
17 felony, the murder of the child results, he's guilty as
18 a co-conspirator. So, you could literally stop with the
19 DNA, but you don't have to. You have all this other
20 evidence that corroborates it.

21 You have Angelita, who is the most
22 compelling of all. And the defense didn't really have a
23 lot to say about her because what are they going to say
24 about a woman who takes the witness stand and cries and
25 sobs about what is probably her most shameful personal

1 choice of her life, her decision not to tell what she
2 knew. Those were her friends. Why didn't she tell?
3 Well, because he told her: I'm loose in the Dominican
4 Republic months after the murder. The Dominican
5 Republic, where she was born and raised and where all
6 her family lives. And he also told her that he would
7 kill her and he threatened her family. And I'm sorry,
8 but it would take a big person to walk out of a country
9 like the Dominican Republic where your ex-husband, who
10 you know what he's capable of, is living and is loose,
11 and say: I don't care about my family, I'm going to go
12 rat him out. So, she made the decision not to do it,
13 but she came here and she told you what she knew. And
14 she did it through tears. And her anguish was readily
15 apparent. And I don't know how you can listen to what
16 she said and not believe every word of it.

17 I also want to ask you about another part
18 of her testimony, something that she did tell the police
19 from the very beginning. She did tell the police that
20 on the morning after the kidnapping occurred, she
21 confronted her husband and said: Hey, Angelo, has been
22 kidnapped, let's go see Diana, let's go see if we can
23 help her. And how did he respond to that? No, I'm not
24 going over there. These were their friends. No, I'm
25 not going over there. And you need to get out of here

1 because the police are going to be here soon. She
2 looked at him, this man she was married to, and she
3 said: Did you have something to do with what happened
4 to Angelo?

5 Ladies and gentlemen, what kind of woman
6 asks that question? I will tell you. A woman who knows
7 her husband all too well. Did you have something to do
8 with it? And how did he respond? Silence. That tells
9 you a lot. And while Angelita was packing her things to
10 move away, while the defendant -- while Angelita was
11 making arrangements to go visit her friends who had lost
12 their son, the defendant was packing his things to move
13 to Puerto Rico. While Angelita was pondering what had
14 happened, the defendant was out washing Angelo Garcia,
15 Jr.'s blood out of the back seat of his car so he could
16 sell it. While she was sitting there trying to figure
17 out where to go and what to do and where to stay, he was
18 buying a one-way ticket home. And he never intended to
19 come back. That tells you a lot. He left.

20 The 28th Chapter of Proverbs says: The
21 wicked flee so no one pursues them, but the righteous
22 are as bold as lions. Ladies and gentlemen, there is
23 the wicked right there. And you can ask yourself why he
24 left and why he forfeited on a bond on a case pending
25 out of this very court to do it the day after Angelo

1 Garcia, Jr. was killed and that tells you a lot.

2 You have lots of other witnesses. You have
3 Linda Hernandez, who had no dog in this hunt, who came
4 in here and told you that that man and Rudy came to her
5 apartment in the middle of the night. And then you have
6 Rudy telling the very same thing and telling you why
7 they were looking for a car in the middle of the night.
8 You have Rudy giving you other information time and time
9 again about the case that even Agent Ebersole didn't
10 know corroborating other facts that we've known since
11 1992. Like the rock that Randy Rhodes told you about on
12 little Angelo Garcia, Jr.'s torso buried in the mud.
13 And Rudy, all of those years later, telling us exactly
14 how it got there.

15 You know, the defense can cast stones at
16 Rudy all day long. And I'm not here to tell you that
17 he's perfect, because he is not. But I'm here to tell
18 you that there is only one reason why he's here and
19 that's because he got sick of living with it. How in
20 the world could the State have offered him anything for
21 his testimony when we didn't know what his testimony was
22 going to be? We had nothing on Rudy when Sergeant
23 Ebersole went to talk to him. He was not under threat
24 of any kind of indictment or charges. We had nothing.

25 Think back to the evidence you heard in the

1 case. At best, we could put Rudy with the defendant at
2 2:00 to 3:00 in the morning looking for a car. We have
3 nothing to tie him to the original crime scene. He
4 didn't match the descriptions of the guys who were in
5 there and his DNA didn't match. Nothing. The reason we
6 didn't negotiate with Rudy about a deal on the case is
7 because until Rudy wrote it down in that written
8 statement, we had nothing. How could we have offered
9 him something for something we didn't know existed or
10 that he had?

11 So, the defense puts the cart before the
12 horse when they make the argument that, oh, the State
13 didn't charge him and that's why he told. No, he told
14 first. He told first in 2008 -- I mean 2011 when
15 Sergeant Ebersole talked to him. That's when he told.
16 And he wrote it down and he is nailed to it. And that
17 happened before we even knew that there was any
18 connection. So, that whole argument fails. It doesn't
19 matter. It's not what happened here.

20 Ladies and gentlemen, you have a
21 combination of evidence in this case that the defendant
22 just can't get around. You have DNA. You have Angelita
23 who told you that the defendant admitted this case to
24 her. And with great shame, she admitted that she didn't
25 tell anybody.

1 You have Rudy, who filled in all the gaps
2 for you. And those gaps are corroborated by evidence
3 that we have known for years. You have Linda Hernandez,
4 who puts him out looking for a car just hours afterwards
5 and tells you that he came from Baytown. You have all
6 of that evidence, ladies and gentlemen. There is no
7 reasonable doubt here. And, basically, I stand here in
8 front of you today on behalf of all of those police
9 officers, all of those police officers who told you that
10 they couldn't put this case behind them. I stand here
11 on behalf of you today for Diana Garcia, who gave up her
12 son. I stand here on behalf of Angelo Garcia, Jr., who
13 didn't get the chance to finish the first grade. And I
14 stand here on behalf of countless citizens of Harris
15 County who heard that story on October 1st, of 1992, and
16 said to themselves: Put me on that jury, put me on that
17 jury. I won't stand for someone doing what that man did
18 to little Angelo Garcia, Jr. over money and drugs.

19 Today is the day, ladies and gentlemen.
20 Today is the day. Today is the day that twelve of you,
21 fourteen, will stand up and I will sit down. And I will
22 leave it in your hands. I hope by your verdict you tell
23 this man that you can run and you can hide for a while,
24 but justice is going to catch up with you. And that's
25 who we are, we're justice, and we're here for you today.

1 And we won't leave and we won't give up and we won't
2 stand for it until you've answered for what you did to
3 Angelo Garcia, Jr.

4 When you stand up, I want you to look
5 across the courtroom at that man with the resolve of
6 fourteen citizens of Harris County who aren't going to
7 put up with that. And I ask you to find him guilty of
8 capital murder because that's what he's guilty of.

9 THE COURT: Thank you, Ms. Tise.

10 Ladies and gentlemen of the jury, at this
11 time, all of the evidence, the Court's charge, and the
12 closing arguments of counsel are before you. I'm going
13 to hand to the bailiff the charge together with the
14 verdict form. They will be left with you in the jury
15 room. And once all the members of your jury are present
16 and assembled, you should -- at that point, the case is
17 formally submitted to you and you should select your
18 foreman and begin your deliberations.

19 Please step down from the jury box and
20 accompany the bailiff into the jury room. We stand in
21 recess until you've reached a verdict.

22 (Jury deliberating)

23 (Open court, defendant present, no jury)

24 THE COURT: Please be seated.

25 Court is in recess until the jury rings.

1 (Recess)

2 (Open court, defendant present, no jury)

3 THE COURT: Back on the record in Cause

4 No. 1384794. We have received a note from the jury.

5 The question asks: Are we only allowed to consider the

6 interpreter's response of the witness in English and not

7 the Spanish response as heard by Spanish-speaking jury

8 members. Signed, Foreman of the Grand jury.

9 And after discussion with both lawyers, the

10 Court's response will be: The interpreter's response is

11 the official record and evidence in the case.

12 Do you have any objection, Mr. Cornelius?

13 MR. CORNELIUS: No objection, Judge.

14 THE COURT: Ms. Tise?

15 MS. TISE: No objection.

16 THE COURT: Very good. It will be sent

17 back to the jury.

18 Deputy Perry.

19 (Recess)

20 (Open court, defendant present, no jury)

21 THE COURT: Let the record reflect that

22 the attorneys for the State and the attorneys for the

23 defendant are present in the courtroom.

24 I have received a message from the jury

25 that it has reached a verdict. And the defendant, Obel

1 Cruz-Garcia, is seated at counsel table as well.

2 Bailiff, please bring the jury into the
3 courtroom.

4 THE BAILIFF: Yes, ma'am.

5 (Open court, defendant and jury present)

6 THE COURT: Please be seated.

7 We're back on the record in Cause
8 No. 1384794, the State of Texas vs. Obel Cruz-Garcia.

9 Let the record reflect that the attorneys
10 for the State and the attorneys for the defendant are
11 both present. The defendant is present at counsel
12 table. And all members of the jury are present and
13 seated in the courtroom.

14 As the foreperson, have you received a
15 verdict in this case?

16 FOREPERSON: We have, Your Honor.

17 THE COURT: Would you please hand the
18 verdict form to the bailiff to deliver to me for
19 inspection?

20 (Foreperson complies)

21 THE COURT: All right. Mr. Foreperson,
22 is the verdict the unanimous of all members of the
23 jury?

24 FOREPERSON: It is, Your Honor.

25 **JURY'S VERDICT**

1 THE COURT: And Mr. Obel Cruz-Garcia, you
2 are standing.

3 Cause No. 1384794, the State of Texas vs.
4 Obel Cruz-Garcia. We, the jury, find the defendant,
5 Obel Cruz-Garcia, guilty of capital murder as charged in
6 the indictment.

7 And I will ask either side, the State or
8 the defense, would you like -- wish the jury to be
9 polled?

10 MR. CORNELIUS: Yes, Your Honor.

11 MS. TISE: No, Your Honor.

12 THE COURT: Okay. Help me poll the jury.
13 Do you have the names?

14 THE CLERK: Juror No. 1, is this your
15 verdict?

16 JUROR: Yes.

17 THE CLERK: Juror No. 2, is this your
18 verdict?

19 JUROR: Yes.

20 JUROR: We don't know the numbers.

21 THE COURT: Thank you. We'll --

22 THE CLERK: Juror No. 2, is this your
23 verdict.

24 THE COURT: I'm going to call their names.
25 Deputy Perry just gave me their names.

1 Let me start with Juror No. 2, Joshua
2 Caluag, is this your verdict?

3 JUROR: Yes.

4 THE COURT: Thank you.

5 Juror No. 5, Larry Jordan, is this your
6 verdict?

7 JUROR: Yes.

8 THE COURT: Juror No. 28, Olga Sanchez, is
9 this your verdict?

10 JUROR: Yes.

11 THE COURT: Juror No. 40, Wayne Montgomery,
12 is this your verdict?

13 JUROR: Yes.

14 THE COURT: Juror No. 64, Nancee Pyper, is
15 this your verdict?

16 JUROR: Yes.

17 THE COURT: Juror No. 76, Angela Bowman, is
18 this your verdict?

19 JUROR: Yes.

20 THE COURT: Angela Bowman?

21 JUROR: Yes.

22 THE COURT: Yes.

23 Juror No. 84, Casey Guillotte -- I'm
24 sorry -- Guillotte, is this your verdict?

25 JUROR: Yes.

1 THE COURT: Jennifer Sims, No. 93, is this
2 your verdict?

3 JUROR: Yes.

4 THE COURT: Virginia Allman, Juror No. 97,
5 is your verdict?

6 JUROR: Yes.

7 THE COURT: Matthew Clinger, Juror
8 No. 10 -- excuse me -- Juror No. 110, is this your
9 verdict?

10 JUROR: Yes.

11 THE COURT: And Leonard Torres, Juror
12 No. 137, is your verdict.

13 JUROR: Yes.

14 THE COURT: Karen Sue Bridges, Juror
15 No. 141, is this your verdict?

16 JUROR: Yes.

17 THE COURT: The Court finds that the
18 verdict is a unanimous verdict of all members of the
19 jury.

20 At this time, ladies and gentlemen, this
21 phase of the trial is completed and we'll now go on to
22 the second phase of the trial, which will be the
23 punishment phase of the trial. All of the same
24 admonishments are still in effect. We're not going to
25 continue the punishment phase of the trial this

1 afternoon, but we'll recess instead and begin arguments
2 and testimony in the punishment phase in the morning.
3 Okay? And I believe that 10:00 is a good time to begin.
4 We came in early today, at 9:00, so you could proceed
5 with this long day. And I believe it has been a long
6 day.

7 So, at this time, you are released. And we
8 are in recess until the morning when we'll begin the
9 punishment phase of the trial.

10 I want to remind you that you should not
11 talk amongst yourselves or with anyone on any subject
12 connected with the trial or to form or express any
13 opinion thereon until the end of this trial.

14 Okay. At this time, you are released. You
15 may go with Deputy Perry.

16 THE BAILIFF: All rise.

17 (Open court, defendant present, no jury)

18 THE COURT: At this time outside the
19 presence of the jury, let me look at the indictment.
20 There is nothing further to read in the indictment, no
21 enhancement paragraph or anything alleged in the
22 indictment further. Is that correct?

23 MS. TISE: That's correct, Judge.

24 THE COURT: Okay. So, in the morning,
25 we'll be ready to proceed with opening arguments, and

1 directly after that presenting evidence in the
2 punishment phase at 10:00 a.m.

3 MS. TISE: We'll be ready.

4 THE COURT: Okay. And, once again, is
5 there anything further that we need to put on the record
6 this afternoon?

7 MR. CORNELIUS: I don't think so, Judge.

8 THE COURT: Very well. Then we'll be in
9 recess till 10:00 in the morning.

10 (End of guilt-innocence proceedings)

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF HARRIS)

I, Mary Ann Rodriguez, Official Court Reporter in
and for the 337th District Court of Harris County, State
of Texas, do hereby certify that the above and foregoing
contains a true and correct transcription of all
portions of evidence and other proceedings requested in
writing by counsel for the parties to be included in
this volume of the Reporter's Record, in the
above-styled and numbered cause, all of which occurred
in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of
the proceedings truly and correctly reflects the
exhibits, if any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND this the 14th day of
October, 2013.

/s/ Mary Ann Rodriguez
Mary Ann Rodriguez, Texas CSR 3047
Expiration Date: 12/31/2013
Official Court Reporter
337th Court
1201 Franklin
Houston, Texas 77002
713.755.7746

'			
'skip' - 2:11	3	absurd - 44:11, 44:13, 46:19, 60:11	allude - 25:12
/	30 - 56:8	absurdity - 48:8	almost - 30:3, 62:9
/s - 107:21	30-plus - 30:2	accent - 47:4, 64:4, 65:9, 66:8, 82:6, 85:7	alone - 10:11, 23:25, 27:1, 32:3, 38:21, 71:2, 82:14, 91:18, 93:13
0	3047 - 107:21	accents - 47:14	Alphabetical - 1:11
00795683 - 2:4	30th - 4:19, 13:21, 14:4, 14:24, 15:10, 15:17, 16:11, 17:3, 17:9, 17:21, 18:5, 18:20, 18:25, 19:12, 19:20, 20:15, 21:3, 21:21, 22:9, 31:5, 34:19, 36:19, 39:2, 39:24	accident - 25:25	amazing - 62:7
00797777 - 2:15	32 - 44:7	accommodation - 7:14	America's - 89:4
04831500 - 2:12	33 - 61:22, 61:24	accompany - 99:20	american - 47:8
1	337th - 1:12, 4:14, 107:5, 107:23	accompanying - 24:8	American - 57:9, 85:6
1 - 90:3, 102:14	36 - 42:18	accomplice - 23:15, 24:10, 24:17, 35:13, 35:14, 35:15, 35:17, 35:19, 35:21, 36:2, 37:12, 70:24, 71:1, 71:17, 71:20	amount - 40:2, 67:8
10 - 104:8	3:00 - 97:2	accomplice's - 24:11	amounting - 5:15
101 - 1:7	4	accomplished - 6:11	Angela - 103:17, 103:20
102 - 1:8	40 - 1:4, 103:11	accorded - 25:7	Angelita - 37:6, 37:8, 54:1, 93:21, 95:9, 95:10, 95:13, 97:22
107 - 1:9	42 - 49:14	according - 57:2, 59:8, 59:20, 66:17, 80:19, 81:13	Angelo - 11:7, 11:9, 11:10, 11:17, 11:19, 12:4, 12:5, 12:7, 12:8, 12:15, 12:17, 12:25, 13:11, 13:13, 13:14, 13:25, 14:1, 14:9, 14:10, 15:2, 15:3, 15:5, 15:6, 15:14, 15:15, 15:22, 15:23, 16:14, 16:16, 16:17, 17:6, 17:13, 17:25, 18:3, 18:9, 18:10, 18:12, 18:23, 19:4, 19:15, 19:23, 19:24, 20:18, 20:20, 20:21, 20:23, 20:25, 21:1, 21:7, 21:8, 21:9, 21:11, 21:13, 21:14, 21:24, 22:1, 22:2, 22:4, 22:6, 22:7, 22:13, 22:14, 22:15, 22:17, 22:19, 22:20, 31:8, 31:9, 32:8, 32:16, 34:14, 34:20, 34:22, 36:19, 36:25, 38:23, 39:1, 39:11, 42:5, 42:18, 43:10, 50:6, 80:1, 85:25, 87:8, 87:20, 88:4, 88:8, 88:19, 88:24, 89:6, 94:21, 95:4, 95:14, 95:25, 96:12, 98:12, 98:18, 99:3
10:00 - 105:3, 106:2, 106:9	440 - 2:15	accountable - 80:11	Angelo's - 40:5, 86:17
11 - 39:16, 39:18	4:30 - 86:16	acquit - 23:13, 27:1, 27:8, 27:16	angry - 55:17
110 - 104:8	5	act - 4:25, 5:15, 7:21, 18:2, 18:11, 19:17, 19:25, 23:18, 24:7	anguish - 94:14
12/31/2013 - 107:22	5 - 103:5	acting - 6:14, 10:1, 10:7, 24:3	Ann - 107:4, 107:21
1201 - 2:6, 107:23	5th - 42:18	acts - 8:20, 9:1, 9:5, 9:13, 9:18, 9:22, 11:1	annex - 90:12
1225 - 2:15	6	actual - 8:4, 58:15, 93:1	answer - 48:16, 89:23
137 - 104:12	6 - 33:5, 34:4, 92:12	adapted - 7:14, 8:7	answered - 48:16, 99:2
1384794 - 1:3, 3:3, 4:13, 100:4, 101:8, 102:3	6-year-old - 39:1, 85:25, 86:3, 86:4	added - 76:12	answers - 51:17
141 - 104:15	64 - 103:14	address - 81:9	anticipated - 10:19, 12:10, 13:16, 15:8, 16:19, 34:1, 35:7
14th - 107:16	7	admissible - 69:21	Ap-77,025 - 1:4
15 - 1:3, 45:5, 45:8, 54:14, 65:10, 68:12, 68:15, 68:21, 69:1, 69:2, 69:8, 91:11	713.237.8547 - 2:13	admission - 70:25	apartment - 39:25, 44:9, 49:16, 51:22, 52:3, 52:9, 81:18, 82:11, 82:15, 88:13, 88:19, 96:5
15th - 1:20, 3:5	713.755.5800 - 2:7	admit - 58:15, 58:16, 58:19	apparent - 6:13, 7:20, 94:15
16 - 39:16, 39:18	713.755.7746 - 107:24	admitted - 26:6, 66:19, 97:23, 97:24, 107:15	Appeals - 1:4
17 - 35:17, 58:3	713.877.9400 - 2:16	admonishments - 104:24	Appellant - 1:7
17-month - 73:23	76 - 103:17	adoption - 65:17	Appellee - 1:12
17-year - 58:1	77002 - 2:6, 107:24	afraid - 72:15	applicable - 4:9
17-years - 73:23	77002-1659 - 2:16	African - 46:18, 47:8, 47:9, 47:13, 64:20, 64:25, 65:2, 65:6	applies - 33:22, 34:6
1892 - 46:19	77019-2408 - 2:13	agent - 58:12, 58:22, 59:2, 74:4, 76:9, 76:16, 76:20	apply - 34:9, 37:22, 37:23
1992 - 4:19, 13:22, 14:5, 14:25, 15:11, 15:18, 16:12, 17:3, 17:9, 17:22, 18:6, 18:20, 19:1, 19:12, 19:20, 20:16, 21:3, 21:22, 22:9, 31:5, 36:19, 39:2, 39:24, 42:18, 45:20, 46:18, 46:19, 52:14, 54:2, 54:5, 54:7, 55:12, 63:15, 63:16, 63:22, 64:19, 65:6, 86:2, 86:23, 96:11, 98:15	78 - 1:5	Agent - 96:9	applying - 63:3
1st - 86:2, 86:14, 86:16, 86:23, 98:15	8	aggravated - 5:20, 9:11, 20:13, 23:2, 23:5, 23:10, 29:6, 37:19, 37:23, 38:10, 38:13, 38:18, 39:9, 41:6, 41:10, 41:15, 41:18, 56:10, 56:24	appreciate - 29:23
2	80s - 55:9, 55:12	ago - 42:15	appropriate - 27:25
2 - 102:17, 102:22, 103:1	84 - 103:23	agree - 16:24, 20:11, 38:15, 93:7	appropriation - 7:24
20 - 40:1, 40:3, 40:5, 40:11, 49:11	9	agreed - 27:24	appurtenant - 7:17
20-year - 90:25	911 - 45:12	agreement - 10:22, 10:25, 11:22, 11:25, 13:4, 13:7, 14:20, 14:22, 16:7, 16:9	area - 37:13
2008 - 52:24, 84:24, 89:15, 97:14	93 - 104:1	aid - 10:10, 11:16, 12:23, 14:14, 16:2, 17:18, 18:16, 19:8, 20:5, 21:18, 22:24, 24:6, 26:7, 33:8, 67:2	argue - 51:12
2011 - 76:10, 97:14	95 - 80:21	aided - 1:24, 11:16, 12:23, 14:14, 16:1, 17:17, 18:16, 19:8, 20:4, 21:17, 22:23	arguing - 51:2, 51:15
2013 - 1:20, 1:3, 3:5, 107:17	97 - 104:4	aiding - 26:7, 34:21	Argument - 1:4, 1:5
2028 - 2:12	99 - 1:6	aids - 10:9, 24:5, 33:7	argument - 29:8, 47:7, 60:8, 64:10, 77:18, 81:10, 83:7, 83:14, 84:22, 92:21, 97:12, 97:18
23 - 1:2, 1:1, 1:4, 1:5, 1:6, 1:7, 1:8, 1:9	9:00 - 105:4	Alice - 51:1	Arguments - 81:5, 84:19
24039247 - 2:5	A	alleged - 4:18, 11:8, 12:16, 25:17, 25:18, 26:2, 105:21	arguments - 3:6, 28:22,
26 - 30:4, 41:4	abandoned - 41:16	Allman - 104:4	
27 - 61:21	abduct - 6:2, 20:18, 21:6, 21:24, 22:12	allow - 53:16, 53:22	
28 - 103:8	abducted - 73:13, 73:14	allowed - 77:17, 100:5	
28th - 95:20	abducts - 5:19, 5:21		
29 - 1:4	abide - 75:3		
2:00 - 97:2	ability - 7:6		
	able - 37:20, 77:17, 77:18		
	above-entitled - 1:21		
	above-styled - 107:11		
	absence - 25:25		
	absolutely - 38:23, 54:24, 89:12		

<p>46:1, 66:2, 74:24, 77:5, 77:6, 79:8, 99:12, 105:1, 105:25</p> <p>arms - 81:21, 85:17, 88:14</p> <p>arrangements - 95:11</p> <p>arrested - 26:21</p> <p>Arturo - 46:21, 46:25, 47:2, 48:13, 49:10, 50:12, 52:4, 66:9, 66:11, 66:15, 85:16, 86:11, 86:17, 88:1, 91:4, 91:7</p> <p>Arturo's - 39:25</p> <p>ashtray - 44:19</p> <p>Asian - 45:22, 64:1</p> <p>aside - 57:14, 57:15, 71:4</p> <p>asleep - 86:4</p> <p>assault - 5:25, 6:18, 6:24, 7:10, 8:25, 11:24, 13:6, 14:21, 16:8, 33:18, 35:4, 36:17, 44:23, 45:7, 45:13, 48:20, 56:10, 66:24, 68:7, 90:11, 93:14, 93:16</p> <p>assaulted - 66:22, 67:17, 67:22, 67:23, 67:24, 68:1, 68:9, 68:11, 69:14</p> <p>assembled - 99:16</p> <p>assent - 6:12, 7:19</p> <p>assigned - 63:19</p> <p>assist - 10:8, 11:14, 12:21, 14:13, 15:25, 17:16, 18:15, 19:6, 20:3, 21:16, 22:22, 24:4</p> <p>Assistant - 2:5</p> <p>assume - 59:22</p> <p>attached - 28:1</p> <p>attempt - 5:10, 5:11, 5:23, 10:13, 28:14, 33:15</p> <p>Attempt - 5:13</p> <p>attempted - 11:16, 12:23, 14:14, 16:1, 17:18, 18:16, 19:8, 20:5, 21:18, 22:24</p> <p>attempting - 5:7, 11:6, 12:14, 13:24, 14:8, 15:13, 15:21, 31:8</p> <p>attempts - 10:10, 24:6, 33:7</p> <p>attention - 29:24</p> <p>Attorney - 1:4, 1:5</p> <p>attorneys - 4:3, 4:4, 28:15, 80:20, 100:22, 101:9, 101:10</p> <p>Attorneys - 2:5, 2:7, 2:17, 40:15</p> <p>authority - 28:8, 78:3</p> <p>authorized - 7:21</p> <p>autopsy - 43:16, 72:25, 73:1, 79:25</p> <p>Aviles - 11:16, 11:22, 12:2, 12:23, 13:4, 13:9, 14:5, 14:15, 14:18, 15:1, 15:18, 16:2, 16:5, 16:13, 17:10, 17:18, 18:6, 18:17, 19:1, 19:8, 19:21, 20:5, 21:4, 21:18, 22:10, 22:24</p> <p>aware - 9:6, 9:20, 9:23</p>	<p>base - 38:3, 70:11, 71:1, 71:7, 71:8, 71:10, 71:15, 71:18, 76:22</p> <p>Based - 73:16</p> <p>based - 32:13, 38:11, 38:24, 39:5, 39:11, 39:23, 42:12, 43:12, 61:8, 61:9, 71:19, 72:25, 80:7, 85:12</p> <p>basic - 87:14</p> <p>Batman - 87:7, 87:22</p> <p>Baytown - 34:19, 37:2, 39:2, 40:1, 40:8, 59:1, 76:17, 87:5, 98:5</p> <p>beach - 87:5</p> <p>bearing - 86:7</p> <p>beat - 66:23</p> <p>beaten - 66:24</p> <p>became - 89:6</p> <p>bed - 86:4, 87:7</p> <p>bedroom - 86:22</p> <p>begin - 4:11, 90:22, 99:18, 105:1, 105:3, 105:8</p> <p>beginning - 83:21, 84:25, 89:12, 94:19</p> <p>behalf - 25:6, 61:12, 98:8, 98:11, 98:12, 98:14</p> <p>behind - 57:1, 83:9, 98:10</p> <p>belabor - 85:2</p> <p>beliefs - 92:21</p> <p>believes - 7:5</p> <p>best - 56:12, 90:16, 91:17, 92:12, 92:17, 97:1</p> <p>bet - 62:1, 63:17, 67:7</p> <p>better - 51:16</p> <p>between - 10:22, 45:4, 47:3, 65:5, 92:2</p> <p>Beyond - 31:19</p> <p>beyond - 11:4, 11:12, 11:20, 12:12, 12:19, 13:2, 13:20, 14:3, 14:17, 15:9, 15:16, 16:4, 16:22, 17:2, 17:8, 17:21, 18:4, 18:19, 18:24, 19:11, 19:19, 20:9, 20:15, 21:2, 21:21, 22:8, 23:3, 25:2, 25:21, 26:20, 27:2, 27:7, 27:10, 30:22, 31:2, 31:16, 60:25, 62:23, 62:25, 63:11, 70:20, 77:12, 78:17</p> <p>big - 49:23, 51:18, 54:5, 66:6, 79:24, 82:1, 94:8</p> <p>bike - 88:5</p> <p>bit - 36:9</p> <p>bizarre - 30:7</p> <p>black - 45:17, 45:18, 45:22, 46:10, 46:11, 46:13, 46:22, 47:18, 48:2, 50:23, 51:3, 51:12, 51:13, 51:15, 63:22, 63:25, 64:3, 64:5, 64:14, 64:17, 64:19, 64:20, 64:21, 64:23, 65:3, 65:5, 65:9, 65:14, 65:16, 65:19, 66:7, 66:10, 67:12, 67:13, 67:14, 83:14, 83:19, 83:22, 84:23, 85:1, 85:19</p> <p>Black - 64:22</p> <p>blamed - 55:11</p> <p>bleed - 67:8, 67:9, 67:11</p> <p>bleeding - 67:6</p> <p>blew - 32:6, 32:7</p> <p>blood - 67:4, 67:5, 67:8, 67:11, 95:15</p> <p>blow - 34:14</p> <p>blue - 87:21</p> <p>Bodily - 8:11</p> <p>bodily - 4:24, 5:24, 6:16, 8:8, 8:10, 8:13, 8:16, 17:24, 18:9, 19:14, 19:23, 20:25, 21:13, 22:6, 22:19</p> <p>body - 7:11, 7:12</p>	<p>bold - 95:22</p> <p>bond - 95:24</p> <p>bone - 74:20, 75:16</p> <p>bones - 43:22, 43:23, 74:18, 75:6, 75:8, 75:10, 79:25, 80:4, 80:7, 87:6</p> <p>born - 71:21, 94:5</p> <p>bought - 43:3</p> <p>Bowman - 103:17, 103:20</p> <p>box - 64:14, 64:15, 65:16, 99:19</p> <p>boxes - 64:13</p> <p>boy - 42:7, 42:8, 45:15, 45:16, 51:7, 53:14, 53:15, 53:24, 55:24, 55:25, 56:2, 58:6, 58:7, 59:14, 72:3, 72:10, 72:18, 74:10, 80:6, 86:3, 86:22, 87:4, 87:20, 92:25</p> <p>boys - 86:4, 88:6</p> <p>break - 40:25, 56:7</p> <p>breath - 67:1</p> <p>Bridges - 104:14</p> <p>brief - 29:12</p> <p>bring - 3:22, 41:20, 101:2</p> <p>broke - 51:22, 52:3, 86:6</p> <p>brought - 26:12, 55:9, 82:2</p> <p>Buffalo - 2:12</p> <p>bulk - 39:18</p> <p>bunch - 43:8, 62:14, 85:16</p> <p>burden - 26:15, 27:5, 77:4, 77:11, 91:22</p> <p>burglary - 6:1, 7:7, 9:11, 11:25, 13:7, 14:21, 16:8, 33:17, 35:3</p> <p>buried - 96:12</p> <p>buy - 59:16</p> <p>buying - 95:18</p>	<p>cart - 97:11</p> <p>case - 4:2, 4:9, 24:20, 25:10, 25:16, 25:19, 26:5, 27:4, 28:2, 28:6, 29:20, 29:24, 30:8, 30:25, 31:1, 31:2, 31:11, 32:23, 32:24, 33:16, 33:23, 34:7, 34:10, 34:11, 35:9, 35:18, 36:11, 36:14, 37:23, 38:19, 40:22, 41:7, 41:11, 42:4, 42:15, 43:11, 44:2, 45:11, 52:2, 58:5, 58:9, 60:20, 60:24, 62:12, 63:6, 63:7, 65:13, 67:25, 68:14, 70:1, 70:3, 70:4, 70:5, 70:6, 70:7, 74:1, 75:18, 76:22, 77:23, 78:21, 85:20, 85:23, 85:24, 89:2, 89:5, 89:12, 89:13, 89:22, 90:1, 95:24, 96:9, 97:1, 97:6, 97:21, 97:23, 98:10, 99:16, 100:11, 101:15</p> <p>cases - 26:6, 26:16, 80:22, 89:7</p> <p>Casey - 103:23</p> <p>cast - 96:15</p> <p>catch - 62:6, 62:8, 98:24</p> <p>caught - 62:8</p> <p>caused - 12:4, 13:11, 15:2, 16:14, 31:9</p> <p>causes - 4:23, 5:1, 6:19, 6:21, 8:14, 73:8</p> <p>causing - 6:16, 8:9, 32:16</p> <p>cells - 69:7, 69:11, 90:11, 90:20</p> <p>central - 85:5</p> <p>certain - 9:7, 9:24, 79:17</p> <p>Certainly - 50:10</p> <p>Certificate - 1:9, 107:1</p> <p>certify - 27:25, 107:6, 107:13</p> <p>chain - 88:7</p> <p>chair - 50:18</p> <p>chambers - 107:12</p> <p>chance - 90:4, 98:13</p> <p>change - 59:4, 72:18, 75:14, 78:7</p> <p>changed - 58:11</p> <p>changing - 78:7</p> <p>channels - 87:2</p> <p>Chapter - 95:20</p> <p>character - 43:2, 57:16</p> <p>characters - 42:22</p> <p>charge - 3:5, 3:8, 3:10, 3:11, 3:13, 3:14, 3:19, 4:8, 4:10, 11:8, 12:16, 23:13, 28:9, 28:15, 30:3, 30:13, 33:4, 33:5, 34:4, 34:5, 35:17, 38:7, 39:15, 39:19, 41:2, 41:3, 41:21, 55:18, 56:6, 56:11, 56:23, 62:16, 69:16, 70:14, 70:16, 70:24, 71:22, 91:20, 92:2, 92:4, 92:12, 97:13, 99:11, 99:13</p> <p>charged - 4:17, 16:21, 23:16, 24:13, 25:3, 26:22, 27:7, 29:3, 34:23, 37:24, 38:6, 38:14, 56:19, 56:20, 56:21, 56:22, 57:4, 57:6, 57:12, 69:17, 102:5</p> <p>charges - 96:24</p> <p>charging - 56:16</p> <p>checked - 64:14, 65:17, 68:19</p> <p>child - 48:20, 53:20, 72:23, 73:2, 73:7, 73:13, 74:19, 75:6, 75:9, 75:12, 75:13, 75:25, 76:1, 76:14, 93:17</p> <p>children - 53:19, 54:13, 87:14, 87:19</p> <p>choice - 92:14, 92:16, 94:1</p>
<p>B</p> <p>Baby - 39:1, 40:5, 42:5, 42:18, 43:10</p> <p>bad - 53:12, 89:8</p> <p>bag - 58:3</p> <p>bailed - 55:1, 55:14</p> <p>Bailiff - 101:2, 101:4, 105:16</p> <p>bailiff - 99:13, 99:20, 101:18</p> <p>band - 67:2</p> <p>band-aid - 67:2</p> <p>bandage - 67:3</p>	<p>Black - 64:22</p> <p>blamed - 55:11</p> <p>bleed - 67:8, 67:9, 67:11</p> <p>bleeding - 67:6</p> <p>blew - 32:6, 32:7</p> <p>blood - 67:4, 67:5, 67:8, 67:11, 95:15</p> <p>blow - 34:14</p> <p>blue - 87:21</p> <p>Bodily - 8:11</p> <p>bodily - 4:24, 5:24, 6:16, 8:8, 8:10, 8:13, 8:16, 17:24, 18:9, 19:14, 19:23, 20:25, 21:13, 22:6, 22:19</p> <p>body - 7:11, 7:12</p>	<p>C</p> <p>calmly - 84:9</p> <p>Caluag - 103:2</p> <p>cannot - 13:18, 24:9, 24:18, 25:8, 25:11, 25:19, 71:1, 90:13</p> <p>capable - 6:16, 8:9, 94:10</p> <p>capacity - 62:12</p> <p>capital - 4:18, 5:3, 8:19, 11:3, 11:15, 12:22, 13:19, 16:21, 23:5, 29:2, 30:24, 31:13, 33:20, 33:22, 33:23, 34:22, 35:4, 37:17, 37:25, 38:7, 38:14, 39:17, 41:19, 43:11, 56:9, 60:19, 61:11, 70:11, 73:25, 80:2, 80:19, 99:8, 102:5</p> <p>car - 32:7, 39:24, 40:7, 82:16, 88:21, 95:15, 96:7, 97:2, 98:4</p> <p>care - 8:4, 87:16, 87:17, 90:6, 94:11</p> <p>careful - 27:3</p> <p>carefully - 4:9, 88:6</p> <p>carelessly - 88:5</p> <p>cares - 32:8</p> <p>Carmelo - 11:16, 11:22, 12:3, 12:23, 13:4, 13:10, 14:6, 14:15, 14:19, 15:1, 15:19, 16:2, 16:6, 16:13, 17:10, 17:18, 18:7, 18:17, 19:2, 19:9, 19:21, 20:5, 21:4, 21:18, 22:10, 22:24, 24:16, 24:20, 48:22</p> <p>carried - 88:13</p> <p>Carried - 88:14</p> <p>carry - 10:13, 12:1, 13:8, 14:23, 16:10, 33:15</p> <p>carrying - 10:20, 12:11, 13:17, 15:8, 16:19</p>	<p>chain - 88:7</p> <p>chair - 50:18</p> <p>chambers - 107:12</p> <p>chance - 90:4, 98:13</p> <p>change - 59:4, 72:18, 75:14, 78:7</p> <p>changed - 58:11</p> <p>changing - 78:7</p> <p>channels - 87:2</p> <p>Chapter - 95:20</p> <p>character - 43:2, 57:16</p> <p>characters - 42:22</p> <p>charge - 3:5, 3:8, 3:10, 3:11, 3:13, 3:14, 3:19, 4:8, 4:10, 11:8, 12:16, 23:13, 28:9, 28:15, 30:3, 30:13, 33:4, 33:5, 34:4, 34:5, 35:17, 38:7, 39:15, 39:19, 41:2, 41:3, 41:21, 55:18, 56:6, 56:11, 56:23, 62:16, 69:16, 70:14, 70:16, 70:24, 71:22, 91:20, 92:2, 92:4, 92:12, 97:13, 99:11, 99:13</p> <p>charged - 4:17, 16:21, 23:16, 24:13, 25:3, 26:22, 27:7, 29:3, 34:23, 37:24, 38:6, 38:14, 56:19, 56:20, 56:21, 56:22, 57:4, 57:6, 57:12, 69:17, 102:5</p> <p>charges - 96:24</p> <p>charging - 56:16</p> <p>checked - 64:14, 65:17, 68:19</p> <p>child - 48:20, 53:20, 72:23, 73:2, 73:7, 73:13, 74:19, 75:6, 75:9, 75:12, 75:13, 75:25, 76:1, 76:14, 93:17</p> <p>children - 53:19, 54:13, 87:14, 87:19</p> <p>choice - 92:14, 92:16, 94:1</p>

<p>choices - 91:24, 91:25, 92:10, 92:12 cigar - 44:7, 44:8, 44:12, 44:13, 44:18, 48:9, 68:15, 83:6, 90:9 cigarette - 44:20 circumstance - 25:9, 25:14 circumstances - 9:20, 9:21, 69:11 citizens - 86:2, 98:14, 99:6 city - 89:8 civilian - 85:3 claims - 55:4 clean - 43:4 clear - 60:24, 71:14, 83:23 clearly - 4:25, 18:2, 18:11, 19:17, 19:25 clerk - 3:10 Clerk - 102:14, 102:17, 102:22 client - 49:6, 61:12 Clinger - 104:7 close - 47:11, 55:8 closet - 88:11 Closing - 1:4, 1:5, 29:14, 40:18, 78:25 closing - 29:8, 42:6, 99:12 cloth - 82:20 co - 32:21, 33:4, 33:11, 33:14, 34:2, 35:2, 35:8, 93:14, 93:18 co-conspirator - 93:14, 93:18 co-conspirators - 32:21, 33:4, 33:11, 33:14, 34:2, 35:2, 35:8 coercion - 7:23 cognizant - 77:24 cold - 89:5, 89:7, 89:14 collected - 68:15 color - 64:21, 65:3, 65:18, 65:20 combination - 97:21 combine - 37:24, 38:13 coming - 44:12, 50:17, 56:17 comment - 62:15, 62:16 commission - 5:11, 5:12, 5:16, 5:22, 5:23, 10:1, 10:8, 11:14, 12:21, 14:13, 15:25, 17:16, 18:15, 19:7, 20:3, 20:24, 21:12, 21:16, 22:5, 22:18, 22:22, 23:20, 23:21, 24:4, 24:14, 24:15, 24:25, 25:1, 33:1, 33:13, 35:2, 36:22, 37:4 commit - 5:7, 5:10, 5:13, 5:14, 7:9, 10:10, 10:14, 10:17, 11:6, 11:23, 12:14, 13:5, 13:24, 14:8, 14:16, 14:20, 15:13, 15:21, 16:3, 16:7, 17:19, 18:18, 19:10, 20:6, 21:19, 22:25, 24:6, 31:8, 33:15 commits - 4:22, 4:25, 5:3, 5:4, 5:6, 5:18, 5:20, 6:17, 7:7 committed - 4:19, 10:3, 10:7, 10:15, 10:16, 10:18, 12:8, 13:14, 15:6, 16:17, 23:23, 24:3, 24:17, 24:22, 24:23, 25:21, 33:20, 33:22, 33:24, 35:5, 36:5, 37:3, 45:6, 93:15 committing - 5:7, 5:9, 11:6, 12:2, 12:7, 12:14, 13:9, 13:13, 13:24, 14:8, 14:25, 15:13, 15:21, 16:12, 18:1, 18:11, 19:16, 19:25, 25:17, 31:7, 33:19</p>	<p>common - 39:6, 46:12, 83:12, 85:4, 93:2 communicate - 28:8, 28:10 communication - 28:11 community - 85:5, 85:19 compared - 82:12 compelling - 42:16, 93:22 compels - 6:25, 7:2 complected - 83:22 completed - 104:21 completely - 55:1, 56:20 complicated - 62:17, 62:20, 62:21, 83:15, 91:21, 91:23 complies - 101:20 computer - 1:24 computer-aided - 1:24 concede - 41:7 conceivable - 44:15, 45:3, 49:12 concept - 32:20, 35:11, 37:13 concepts - 30:20, 32:18, 35:8, 39:13 concerning - 27:12, 28:16 concludes - 73:17 conclusion - 72:24, 79:17 condition - 8:12, 43:17, 90:8, 90:12 conditions - 89:18, 90:16 conduct - 5:9, 8:21, 9:2, 9:6, 9:7, 9:14, 9:15, 9:16, 9:19, 9:20, 9:21, 9:23, 9:24, 10:3, 10:4, 10:7, 10:24, 23:24, 24:3, 24:7 confessed - 54:4, 54:7 confined - 26:21 confining - 6:10 conflict - 31:22, 32:2, 32:3 confronted - 94:21 confused - 40:10 confusing - 41:3 connect - 24:12, 24:15, 24:22, 24:25, 36:4, 36:21, 37:4, 71:7 connected - 7:12, 7:17, 23:16, 23:18, 28:6, 105:12 connection - 26:1, 97:18 conscience - 76:12 conscious - 8:21, 9:3, 9:15, 43:3 consensual - 82:19, 82:23, 91:10 consent - 6:8, 6:11, 6:21, 6:22, 6:24, 7:8, 7:19, 7:20, 8:1, 20:19, 21:7, 21:25, 22:13 Consent - 6:12, 7:21 consider - 16:25, 20:12, 25:19, 25:23, 26:9, 28:3, 28:4, 28:23, 29:19, 37:21, 38:4, 38:17, 41:8, 41:9, 42:12, 70:21, 100:5 consideration - 25:13, 27:4 considered - 26:14, 35:19 considering - 27:14, 37:12, 38:4 conspiracy - 10:14, 10:20, 10:21, 10:25, 12:1, 12:2, 12:9, 12:11, 13:8, 13:9, 13:15, 13:17, 14:23, 14:25, 15:7, 15:9, 16:10, 16:12, 16:18, 16:20, 33:15 conspirator - 93:14, 93:18 conspirators - 10:15, 32:21, 33:4, 33:11, 33:14, 33:21, 34:2, 35:2, 35:8 constitute - 10:11, 10:24,</p>	<p>24:1 constituting - 10:25 consulting - 49:8 contact - 6:22, 39:4 containing - 4:8 contains - 107:7 contaminate - 90:14 continue - 74:4, 104:25 control - 8:4, 69:3, 90:6 conversation - 37:8 convict - 13:18, 24:18, 72:12, 91:18, 91:24, 93:13 convicted - 26:5, 26:19, 70:1, 70:12 conviction - 24:9, 43:11, 55:16, 69:19, 70:12, 71:1, 73:24 convicts - 61:10 convince - 77:12, 77:14 convinced - 78:16 copy - 3:12, 3:13 Cornelius - 2:11, 3:16, 61:15, 61:18, 61:19, 61:23, 64:12, 66:4, 71:13, 75:3, 75:20, 75:21, 78:23, 80:24, 83:18, 83:24, 84:14, 92:20, 100:12, 100:13, 102:10, 106:7 Cornelius' - 84:6, 84:22 corner - 88:10 correct - 105:22, 105:23, 107:7 correctly - 107:14 corroborate - 69:13, 71:12, 73:19 corroborated - 24:11, 71:16, 71:17, 74:15, 98:2 corroborates - 73:18, 82:14, 93:20 corroborating - 96:10 corroboration - 24:13, 24:24, 36:4, 36:7, 36:9, 36:11, 36:12, 36:13, 36:21, 37:5, 37:10, 37:11 cosigned - 49:16 Counsel - 58:18 counsel - 3:6, 28:22, 46:1, 60:8, 64:10, 66:2, 74:24, 81:5, 84:19, 99:12, 101:1, 101:11, 107:9 counting - 79:17, 79:18, 80:3 countless - 98:14 country - 47:5, 85:6, 94:8 County - 1:9, 1:23, 4:15, 4:20, 13:22, 14:5, 14:24, 15:11, 15:18, 16:11, 17:3, 17:10, 17:22, 18:6, 18:20, 19:1, 19:12, 19:20, 20:16, 21:4, 21:22, 22:10, 31:6, 86:2, 98:15, 99:6, 107:2, 107:5 Couple - 66:11, 76:25 couple - 32:18, 54:11, 55:19, 67:18, 79:21, 81:11 course - 5:6, 5:9, 11:6, 12:2, 12:6, 12:14, 13:9, 13:12, 13:24, 14:7, 14:25, 15:4, 15:13, 15:20, 16:12, 16:16, 29:17, 31:7, 33:19, 37:22, 38:11, 55:19, 55:20, 56:10 court - 3:1, 3:24, 28:14, 35:14, 35:22, 35:23, 89:23, 95:25, 99:23, 100:2, 100:20, 101:5, 105:17, 107:12 Court - 1:3, 1:4, 1:6, 3:2, 3:10, 3:17, 3:21, 3:25, 4:8, 4:14, 28:11, 28:16, 29:13, 40:14, 40:17, 45:25, 58:20,</p>	<p>60:5, 61:17, 61:21, 64:8, 66:1, 74:23, 75:19, 78:23, 81:2, 84:1, 84:16, 92:22, 99:9, 99:24, 99:25, 100:3, 100:14, 100:16, 100:21, 101:6, 101:17, 101:21, 102:1, 102:12, 102:21, 102:24, 103:4, 103:8, 103:11, 103:14, 103:17, 103:20, 103:22, 104:1, 104:4, 104:7, 104:11, 104:14, 104:17, 105:18, 105:24, 106:4, 106:8, 107:4, 107:5, 107:22, 107:23 Court's - 30:2, 62:16, 99:11, 100:10 courtroom - 4:5, 4:6, 42:8, 82:3, 99:5, 100:23, 101:3, 101:13 cousin - 55:8, 55:20, 55:21 cover - 68:14 covered - 67:5 crafty - 73:21 crap - 43:6 crawling - 60:16 crazy - 90:23, 91:12 create - 90:17 creates - 8:13 credibility - 26:8, 27:18, 35:24, 51:17, 66:18 credible - 36:1, 37:7, 60:12 credit - 63:13 creeped - 58:8 cries - 93:24 Crime - 45:8, 68:17 crime - 23:16, 23:18, 23:22, 71:7, 81:16, 97:3 criminal - 26:15, 30:7, 32:24 Criminal - 1:4 criminally - 10:2, 10:4, 10:6, 23:22, 23:25, 24:2 cross - 43:23, 49:21, 50:25, 53:10, 70:2, 83:18, 84:6 cross-examination - 43:23, 49:21, 50:25, 53:10, 70:2, 83:18, 84:6 Cruz - 1:6, 3:3, 4:3, 4:14, 4:17, 11:13, 11:21, 12:20, 13:3, 13:23, 14:12, 14:18, 15:12, 15:24, 16:5, 17:4, 17:15, 17:23, 18:14, 18:21, 19:6, 19:13, 20:2, 20:17, 21:15, 21:23, 22:21, 29:1, 29:2, 29:4, 29:5, 31:7, 41:22, 44:8, 48:4, 48:17, 54:2, 56:16, 59:7, 59:8, 59:11, 61:13, 65:13, 65:15, 80:18, 82:17, 82:23, 89:11, 89:15, 89:16, 90:2, 90:5, 91:3, 101:1, 101:8, 102:1, 102:4, 102:5 Cruz-garcia - 1:6, 3:3, 4:3, 4:14, 4:17, 11:13, 11:21, 12:20, 13:3, 13:23, 14:12, 14:18, 15:12, 15:24, 16:5, 17:4, 17:15, 17:23, 18:14, 18:21, 19:6, 19:13, 20:2, 20:17, 21:15, 21:23, 22:21, 29:1, 29:2, 29:4, 29:5, 31:7, 41:22, 44:8, 48:4, 48:17, 56:16, 59:7, 59:8, 59:11, 61:13, 65:13, 65:15, 80:18, 82:17, 82:23, 89:11, 89:15, 89:16, 90:2, 90:5, 91:3, 101:1, 101:8, 102:1, 102:4, 102:5</p>
---	---	--	--

<p>Cruz-garcia's - 54:2 cry - 63:17 crying - 40:9, 72:17 Csr - 107:21 custody - 8:4 cut - 34:16, 75:15, 80:6</p>	<p>91:25, 92:19, 92:24, 93:13, 95:10, 95:12, 95:14, 97:1, 97:21, 97:23, 99:23, 100:2, 100:20, 100:23, 100:25, 101:5, 101:10, 101:11, 102:4, 105:17 defendant's - 23:8, 25:17, 27:3, 27:12, 27:14, 36:15, 36:17 defense - 3:14, 30:14, 32:1, 37:20, 39:21, 40:15, 62:2, 79:23, 80:19, 90:2, 91:5, 91:21, 93:22, 96:15, 97:11, 102:8 Defense - 1:4, 40:18 defined - 5:5, 23:12 definition - 8:18 definitions - 8:23, 9:9 deliberate - 41:1, 42:2 deliberating - 99:22 deliberations - 1:6, 4:12, 25:13, 27:23, 28:2, 28:20, 46:3, 60:7, 64:10, 75:1, 81:5, 84:3, 84:18, 99:18 delineated - 92:3 deliver - 101:18 deposited - 69:11, 69:12 deprive - 7:25 Deputy - 3:23, 46:11, 100:18, 102:25, 105:15 descent - 46:18, 47:9, 47:13, 64:20, 64:25, 65:2, 65:6 describe - 66:23 described - 57:18, 85:18 description - 51:13, 58:24, 85:12 descriptions - 97:4 descriptors - 63:24, 64:22 designed - 8:7 desire - 8:22, 9:3, 9:16, 72:12 desolate - 87:4 detail - 35:12 details - 62:15, 76:25, 87:10 detectives - 61:3 determination - 39:17 determine - 28:18, 72:23, 93:3 determining - 25:23 Devereaux - 45:13, 45:14, 46:8, 52:18 Diana - 36:16, 36:18, 39:25, 44:10, 45:1, 46:23, 46:25, 48:13, 48:20, 49:2, 49:7, 49:17, 51:23, 52:21, 54:8, 59:4, 65:12, 66:9, 66:21, 67:16, 81:18, 82:12, 82:21, 82:23, 83:3, 85:16, 86:15, 86:19, 90:24, 94:22, 98:11 Diana's - 67:12 dictate - 34:11 died - 72:23, 73:2, 73:7, 73:9 difference - 45:21, 45:22, 47:3, 47:6, 47:14 different - 85:7, 91:25, 92:6 differs - 59:19 difficult - 29:22 dime - 58:2 diminished - 55:11, 55:14 dire - 30:18 directed - 11:15, 12:22, 14:14, 16:1, 17:17, 18:16, 19:8, 20:4, 21:17, 22:23, 34:20, 92:19, 92:24 directing - 34:21</p>	<p>direction - 59:15 directly - 106:1 directs - 10:9, 24:5, 33:7 dirty - 87:4 disagreement - 38:8 discount - 90:2 discredit - 58:13 discrepancy - 32:9 discuss - 28:3, 41:1, 68:4 discussed - 3:9, 46:6 discussion - 38:16, 100:9 disfigurement - 8:15 dislike - 55:6 dislikes - 55:19 disparage - 49:6 distinction - 45:18, 46:15, 48:6 distract - 85:22 District - 1:6, 1:12, 2:5, 4:14, 107:5 Dna - 36:14, 36:15, 36:17, 43:14, 44:6, 45:2, 45:5, 45:7, 45:9, 53:1, 56:15, 65:11, 65:13, 68:12, 68:13, 69:1, 69:10, 82:12, 82:18, 82:21, 82:24, 83:2, 83:6, 84:24, 89:16, 89:24, 89:25, 90:3, 90:14, 91:15, 91:18, 93:13, 93:19, 97:5, 97:22 document - 68:24 documented - 84:13 dog - 96:3 Dominican - 37:9, 46:17, 47:5, 54:11, 55:4, 57:10, 94:3, 94:4, 94:9 Dominicans - 47:1, 47:12 done - 29:25, 38:7, 51:8, 51:10, 51:19, 51:20, 54:22, 68:16, 68:18, 68:20, 68:25, 75:15, 80:1 door - 86:7, 88:5 doubt - 11:4, 11:12, 11:20, 12:12, 12:19, 13:2, 13:21, 14:4, 14:17, 15:10, 15:17, 16:4, 16:23, 17:2, 17:8, 17:21, 18:5, 18:19, 18:25, 19:11, 19:19, 20:10, 20:15, 21:2, 21:21, 22:8, 23:4, 23:7, 23:8, 23:11, 25:2, 25:21, 26:21, 27:3, 27:7, 27:10, 27:11, 27:13, 30:23, 31:3, 31:17, 31:19, 31:23, 31:24, 32:4, 44:5, 60:25, 62:23, 63:1, 63:5, 63:6, 63:11, 66:25, 70:13, 70:21, 77:12, 78:15, 78:17, 78:21, 86:24, 98:7 down - 30:14, 37:9, 39:1, 39:3, 39:20, 39:22, 39:25, 40:8, 41:1, 51:3, 56:9, 60:18, 61:24, 64:2, 64:3, 64:4, 65:22, 77:1, 82:16, 83:2, 86:7, 97:7, 97:16, 98:21, 99:19 Dr - 72:21, 74:17, 74:22, 79:23, 80:4, 93:2 dramatic - 42:16 driven - 40:7, 40:8, 57:2 driver - 57:3 driving - 59:22, 59:25 drop - 56:9 dropped - 88:5 drove - 39:25, 88:21 drowned - 73:4 drowning - 73:2, 73:7 drug - 42:24, 55:10, 55:15, 55:18, 60:20, 61:9, 66:19, 70:1, 70:3, 70:4, 70:5, 70:6, 70:7, 73:24, 91:11 drugs - 47:1, 47:11, 48:18,</p>	<p>48:19, 51:24, 52:2, 52:4, 52:6, 52:8, 52:11, 55:13, 58:4, 58:5, 58:8, 59:1, 59:10, 60:17, 63:17, 66:14, 76:18, 98:18 Drugs - 58:2 duress - 41:17 During - 28:2 during - 5:10, 23:19, 42:6, 49:21, 50:25, 51:18, 53:10, 59:3 duty - 27:22, 28:18, 62:23, 77:13</p>
<p>D</p> <p>damning - 36:13 dangerous - 5:1, 18:2, 18:11, 19:17, 20:1, 89:18 dark - 64:25, 65:4, 67:14, 81:21, 81:25, 82:3, 83:21, 83:22 dark-skinned - 64:25, 67:14, 82:3 darker - 65:18, 65:20, 66:9, 85:6 Date - 107:22 date - 50:15, 50:17 days - 29:18, 31:14, 42:18, 87:9 dead - 72:3, 72:6, 72:10, 73:9 deadly - 6:6, 11:11, 12:5, 14:2, 14:11, 15:3, 17:7, 17:14, 18:3, 18:13, 20:22, 21:11, 22:3, 22:17, 31:10 Deadly - 6:13, 8:6 deal - 49:23, 56:5, 56:11, 56:12, 56:21, 97:6 dealers - 42:25, 61:9, 66:19 dealing - 47:11, 48:4, 52:8, 55:12, 58:2, 66:14, 91:7, 91:8 dealt - 46:25, 47:1, 47:11, 47:12, 91:4 death - 4:23, 5:1, 6:16, 8:8, 8:10, 8:14, 11:9, 12:4, 12:17, 13:11, 14:1, 14:9, 15:2, 15:15, 15:22, 16:14, 17:5, 17:13, 17:25, 18:10, 18:23, 19:4, 19:15, 19:24, 31:9, 32:16, 36:20, 43:20 deception - 6:12, 7:22 decide - 63:8, 69:22, 70:9 decided - 3:9, 52:24 decision - 63:10, 94:1, 94:12 deduce - 60:15 defecate - 43:7 defecated - 43:5, 76:5 defecating - 76:3, 76:13 Defendant - 2:17 defendant - 3:1, 3:24, 4:4, 4:5, 4:16, 4:20, 6:23, 6:25, 7:2, 7:5, 8:3, 11:3, 11:5, 11:8, 11:13, 11:21, 12:10, 12:13, 12:16, 12:20, 13:3, 13:16, 13:18, 13:22, 14:12, 14:18, 15:8, 15:11, 15:24, 16:5, 16:19, 16:20, 16:25, 17:4, 17:15, 17:23, 18:14, 18:21, 19:5, 19:13, 20:2, 20:7, 20:12, 20:17, 21:15, 21:23, 22:21, 23:1, 23:4, 23:12, 23:13, 24:12, 24:15, 24:18, 24:22, 25:1, 25:3, 25:5, 25:7, 25:10, 25:21, 26:1, 26:12, 26:15, 26:17, 26:24, 27:1, 27:5, 27:8, 28:19, 28:22, 28:25, 29:2, 29:4, 29:5, 31:6, 32:15, 34:10, 34:13, 34:20, 36:4, 36:14, 36:21, 37:2, 37:4, 37:9, 38:6, 38:20, 39:4, 39:24, 71:7, 71:23, 79:21, 80:9, 89:22, 91:11, 91:19,</p>	<p>E</p> <p>early - 105:4 easily - 32:22 Ebersole - 96:9, 96:23, 97:15 edges - 59:7 effect - 5:16, 42:17, 104:24 effective - 7:8, 7:22, 8:1 Effective - 7:19 either - 23:4, 23:9, 23:19, 44:4, 49:22, 55:5, 63:14, 68:5, 68:6, 69:17, 73:18, 102:7 ejaculated - 82:25 elected - 25:10 elects - 25:6, 25:8 element - 26:20, 27:7 elements - 30:22, 30:24, 31:4, 31:13, 31:15, 31:16, 31:19, 31:25, 32:5, 32:10, 43:25, 58:6 Elliott - 45:19, 52:18, 63:24, 65:19, 65:25, 83:16, 83:20, 84:7, 84:8 Elliott's - 45:24 emotion - 42:9, 42:10, 43:10 emphatically - 66:13 encounter - 82:19 encountered - 39:4 encouraged - 11:15, 12:22, 14:14, 16:1, 17:17, 18:16, 19:7, 20:4, 21:17, 22:23, 92:19, 92:24 encourages - 10:9, 24:5, 33:7 End - 106:10 end - 30:8, 31:1, 32:12, 43:9, 60:23, 63:20, 64:16, 78:14, 105:13 ended - 60:20 ends - 55:19 enemies - 51:9 engage - 9:16, 10:24 English - 46:23, 46:24, 47:19, 48:1, 100:6 enhancement - 105:21 Enter - 7:10 entered - 11:21, 13:3, 14:19, 16:7 enters - 7:9 entitled - 1:21, 70:8 epithelial - 90:11 equal - 78:4 Eric - 89:17, 89:21 especially - 71:22 establish - 67:1, 68:8 evening - 88:3 event - 25:8, 27:13, 93:2 everywhere - 67:6 evidence - 11:4, 11:12, 11:20, 12:12, 12:19, 13:2, 13:20, 14:3, 14:17, 15:9, 15:16, 16:4, 16:22, 17:2,</p>		

17:8, 17:20, 18:4, 18:19, 18:24, 19:11, 19:19, 20:9, 20:14, 21:2, 21:20, 22:8, 23:3, 24:11, 24:19, 25:2, 25:16, 25:20, 26:5, 26:13, 26:25, 27:4, 27:15, 28:4, 28:7, 29:18, 32:13, 36:10, 36:14, 36:15, 38:3, 38:5, 38:11, 40:22, 41:2, 42:12, 42:14, 43:14, 44:3, 44:4, 46:2, 54:5, 58:19, 58:20, 60:8, 60:24, 64:11, 66:3, 68:5, 68:8, 68:10, 69:1, 69:5, 69:10, 71:4, 71:5, 71:6, 72:13, 72:22, 74:24, 75:13, 75:18, 75:19, 75:25, 79:7, 79:18, 81:5, 82:20, 82:24, 83:9, 83:10, 83:16, 84:2, 84:17, 84:19, 89:25, 90:7, 90:14, 91:13, 91:14, 91:15, 92:23, 93:20, 96:25, 97:21, 98:2, 98:6, 99:11, 100:11, 106:1, 107:8 ex - 54:24, 54:25, 94:9 ex-husband - 54:25, 94:9 ex-wives - 54:24 exact - 40:2, 84:5 exactly - 32:14, 62:2, 96:13 examination - 43:23, 49:21, 50:25, 53:10, 70:2, 83:18, 84:6 examinations - 80:23 examiner - 72:16, 74:16 examiner's - 71:25 example - 33:16, 41:17, 80:15, 80:16 examples - 61:1, 79:22, 81:9 except - 28:9 excited - 87:23, 88:9 excludes - 27:11 exclusive - 27:17 excruciating - 87:10 excuse - 43:19, 104:8 execute - 7:6 Exhibit - 1:13 exhibits - 1:14, 107:15 exist - 9:22 existed - 97:9 expert - 67:19, 67:20, 90:7 Expiration - 107:22 explain - 30:12, 65:16, 68:25, 91:16, 91:18 explained - 61:1 explaining - 35:10 explanation - 68:24, 73:5 express - 6:13, 7:20, 105:12 extent - 81:19 extra - 36:3, 63:13 eyes - 87:21	far - 29:24, 63:17, 74:14, 76:24, 79:11 fathom - 88:25 fault - 74:11, 74:12 favor - 23:8 façade - 83:9 Fbi - 56:14, 58:12, 73:25, 76:8, 76:16, 76:20 fear - 72:8, 88:18 features - 81:22 federal - 56:1, 58:3, 70:4 feds - 89:2 fellow - 79:19 felon - 70:12 felonies - 6:1, 33:19, 35:3 felons - 69:24 felony - 5:8, 5:23, 5:24, 7:9, 7:10, 10:14, 10:16, 11:7, 11:24, 12:15, 13:6, 14:20, 16:7, 20:24, 21:13, 22:5, 22:19, 26:12, 33:16, 33:17, 33:18, 33:20, 33:21, 33:25, 35:4, 35:6, 69:20, 93:16, 93:17 felt - 53:16, 59:6, 59:7, 83:1, 88:16 female - 6:19 few - 30:11, 30:12, 30:19, 61:15, 69:8 fighting - 49:1 figure - 35:25, 62:12, 95:16 file - 3:11, 3:13 file-stamped - 3:11, 3:13 fill - 35:25 filled - 63:25, 73:3, 84:12, 98:1 final - 77:6 fine - 31:17, 34:17, 36:1, 93:7, 93:9 finger - 72:11 finish - 30:15, 98:13 first - 38:10, 48:14, 50:13, 51:23, 63:21, 66:6, 67:18, 68:14, 77:5, 77:7, 77:8, 81:13, 81:19, 84:12, 87:22, 90:18, 92:14, 97:14, 98:13 First - 77:3 five - 29:11, 29:18, 31:14, 55:13, 57:25, 70:7, 71:9, 71:18 five-minute - 29:11 flash - 42:21 flee - 95:21 flight - 5:11, 5:23 flip - 39:7, 41:11 flip-side - 39:7 Flores - 2:20 follow - 63:1 Following - 28:22 following - 1:20, 37:15 follows - 8:19, 8:25, 9:12 force - 6:6, 6:11, 6:13, 6:14, 7:1, 7:4, 7:22, 20:22, 21:11, 22:3, 22:17, 44:25 forcibly - 68:10 foregoing - 107:6 Foreman - 100:8 foreman - 27:22, 28:1, 28:13, 78:2, 99:18 foreperson - 101:14 Foreperson - 101:16, 101:20, 101:21, 101:24 forfeited - 95:24 forget - 76:8, 79:6, 86:21 form - 27:25, 99:14, 101:18, 105:12 formally - 99:17 forthcoming - 51:23 four - 29:18, 32:7, 55:13,	87:9 fourteen - 98:21, 99:6 Franklin - 2:6, 107:23 freckles - 87:21 Friday - 3:9, 3:12 friends - 44:10, 47:11, 48:17, 48:25, 49:16, 53:20, 54:8, 54:10, 76:18, 88:16, 94:2, 94:24, 95:11 front - 59:22, 86:10, 88:5, 98:8 full - 43:6 function - 8:16 furtherance - 10:18, 12:9, 13:15, 15:6, 16:17, 33:24, 35:5 furthermore - 33:11	gosh - 74:1 governed - 27:20 grade - 87:22, 98:13 Grand - 26:11, 100:8 grandiose - 76:11 graphic - 83:1 great - 42:19, 55:6, 70:23, 74:7, 76:11, 76:12, 90:12, 97:24 greater - 8:2 greatest - 72:8 grieving - 42:22, 42:23 ground - 76:13 grown - 54:13 guarantee - 86:20, 86:21 guess - 38:25 guide - 81:4 Guillotte - 103:23, 103:24 guilt - 3:6, 26:13, 26:14, 26:23, 27:3, 27:9, 27:12, 27:14, 28:19, 28:21, 106:10 Guilt - 1:16, 1:2 guilt-innocence - 106:10 Guilt-innocence - 1:16, 1:2 guilty - 4:21, 9:25, 10:16, 11:3, 16:20, 16:25, 20:8, 20:12, 23:2, 23:4, 23:7, 23:9, 23:12, 23:14, 25:3, 27:6, 27:16, 29:1, 29:2, 29:4, 29:5, 33:2, 33:21, 34:23, 35:7, 38:6, 38:12, 38:14, 38:20, 39:8, 39:17, 41:13, 41:14, 41:18, 47:17, 56:24, 60:14, 61:8, 61:11, 61:13, 62:24, 77:13, 78:22, 80:2, 80:18, 80:19, 92:1, 92:17, 93:10, 93:17, 99:7, 99:8, 102:5 gun - 44:12, 57:21, 59:19, 70:6 guns - 59:19, 86:7 guy - 47:24, 55:22, 69:25, 70:8, 82:21, 82:25 guys - 29:16, 97:4
F		G	
face - 29:22 facilitate - 5:22, 20:24, 21:12, 22:5, 22:18 fact - 6:13, 7:19, 25:8, 25:12, 26:21, 28:6, 62:6, 65:2, 72:6, 77:24, 79:24, 89:21 facts - 27:17, 29:20, 34:11, 38:24, 39:6, 58:25, 63:3, 72:19, 72:21, 96:10 fails - 5:16, 27:8, 97:18 familiar - 52:1, 53:14, 53:24, 58:4 family - 44:17, 82:9, 94:6, 94:7, 94:11		gagged - 86:8 gained - 53:6 gaps - 98:1, 98:2 garcia - 1:6, 3:3, 4:3, 4:14, 4:17, 11:13, 11:21, 12:20, 13:3, 13:23, 14:12, 14:18, 15:12, 15:24, 16:5, 17:4, 17:15, 17:23, 18:14, 18:21, 19:6, 19:13, 20:2, 20:17, 21:15, 21:23, 22:21, 29:1, 29:2, 29:4, 29:5, 31:7, 41:22, 44:8, 48:4, 48:17, 56:16, 59:7, 59:8, 59:11, 61:13, 65:13, 65:15, 80:18, 82:17, 82:23, 89:11, 89:15, 89:16, 90:2, 90:5, 91:3, 101:1, 101:8, 102:1, 102:4, 102:5 Garcia - 11:7, 11:10, 11:18, 11:19, 12:4, 12:5, 12:7, 12:8, 12:15, 12:18, 12:25, 13:11, 13:13, 13:14, 13:25, 14:1, 14:2, 14:9, 14:10, 15:3, 15:5, 15:6, 15:14, 15:15, 15:22, 15:23, 16:15, 16:16, 16:17, 17:6, 17:13, 17:25, 18:1, 18:3, 18:9, 18:10, 18:12, 18:23, 19:4, 19:15, 19:16, 19:23, 19:24, 20:19, 20:20, 20:21, 20:23, 20:25, 21:1, 21:7, 21:9, 21:11, 21:13, 21:14, 21:25, 22:1, 22:2, 22:4, 22:6, 22:7, 22:13, 22:15, 22:17, 22:19, 22:20, 31:8, 31:9, 32:16, 34:15, 34:20, 34:22, 36:18, 36:20, 36:25, 38:23, 39:11, 44:10, 45:1, 46:23, 48:20, 49:2, 49:7, 49:17, 50:6, 52:24, 54:9, 65:12, 80:1, 85:25, 86:19, 87:20, 88:24, 89:6, 90:24, 95:14, 96:1, 96:12, 98:11, 98:12, 98:18, 99:3 garcia's - 54:2 Garcia's - 36:16, 81:18 gaze - 81:23 general - 77:1 gentlemen - 4:7, 29:15, 32:9, 79:2, 79:15, 81:9, 82:14, 82:17, 83:7, 85:24, 87:13, 88:13, 88:23, 89:20, 90:20, 90:23, 91:17, 91:23, 93:11, 95:5, 95:22, 97:20, 98:6, 98:19, 99:10, 104:20 get-away - 57:3 given - 26:8, 27:18, 29:24, 87:24, 93:15 Glossary end - 1:10	
H		H	
		Habitation - 7:13 habitation - 6:1, 7:9, 9:11, 11:25, 13:7, 14:22, 16:9, 33:18 half - 79:16, 80:12, 80:16, 91:2, 91:5 Half - 75:23 half-truths - 79:16 Hand - 107:16 hand - 3:10, 23:5, 23:6, 99:13, 101:17 handiwork - 70:17 hands - 60:10, 61:6, 98:22 hard - 61:3, 61:4, 63:12, 83:15, 83:17, 91:22 harm - 53:19 Harris - 1:9, 1:23, 4:14, 4:20, 13:22, 14:5, 14:23, 15:11, 15:18, 16:10, 17:3, 17:10, 17:22, 18:6, 18:20, 19:1, 19:12, 19:20, 20:16, 21:4, 21:22, 22:10, 31:6, 86:2, 98:14, 99:6, 107:2, 107:5 hat - 52:5, 52:6 hates - 54:24 head - 48:10, 66:21, 81:20, 86:8 Hear - 78:5 hear - 44:24, 81:6, 85:9, 86:2 heard - 1:21, 29:17, 29:21, 30:6, 31:14, 32:2, 32:14,	

39:23, 54:20, 54:21, 58:22, 76:25, 79:7, 79:9, 79:10, 82:5, 85:10, 87:2, 87:3, 96:25, 98:15, 100:7 hearing - 86:24, 87:10 hears - 86:20 hearsay - 73:12 heart - 78:16 heartbreaking - 87:3 heat - 56:18 held - 1:23 Help - 102:12 help - 63:19, 80:9, 94:23 helped - 48:25 helps - 79:20 her's - 77:18 hereby - 107:6 hereinbefore - 5:5 hereto - 28:1 Hernandez - 2:20, 46:7, 46:22, 46:23, 52:18, 53:8, 63:19, 65:8, 66:12, 66:16, 66:17, 66:20, 86:13, 96:3, 98:3 Hernandez's - 36:23, 37:3 herself - 91:6 hide - 98:23 high - 30:12, 30:19, 80:22 himself - 32:15, 34:13, 57:15, 92:15 Hispanic - 64:1, 64:4, 67:14, 84:23, 85:3, 85:5, 85:19 Hispanics - 64:15, 65:4, 83:22, 85:1, 85:8 history - 72:18 hit - 30:19, 53:1, 73:9 hitting - 75:10, 75:16 hobnobbing - 88:1 hold - 49:5, 80:11 holding - 6:4, 20:20, 21:8, 22:1, 22:14 hole - 48:11, 68:14 holes - 35:25, 81:22 home - 40:6, 57:10, 57:22, 86:5, 91:2, 95:18 homicide - 72:24, 73:17 honest - 69:24 honestly - 85:11 Honor - 3:16, 40:16, 58:18, 75:17, 75:21, 92:21, 101:16, 101:24, 102:10, 102:11 Honorable - 1:22 hope - 77:15, 77:19, 81:9, 85:15, 85:20, 87:9, 98:22 horrible - 72:4, 72:5, 86:1, 87:12 horror - 87:11 horse - 97:12 host - 52:20 hour - 61:22 hours - 69:8, 88:3, 98:4 house - 44:19, 82:8, 86:7, 88:9 Houston - 1:23, 2:6, 2:13, 2:16, 45:7, 45:20, 54:13, 86:24, 89:8, 107:24 Hpd - 46:7, 68:17 huge - 72:9, 72:10, 72:12 human - 5:1, 18:2, 18:11, 19:17, 20:1 humanitarian - 70:23, 74:8 hunt - 96:3 hurdle - 66:6 husband - 45:2, 50:2, 50:4, 50:8, 53:3, 54:25, 91:1, 94:9, 94:21, 95:7 hypothetically - 63:5	I idea - 35:13, 37:14, 41:8, 49:3, 56:25, 57:13, 57:20, 60:9, 60:17 identified - 45:16, 45:17, 46:10, 47:18 identifiers - 46:8 identify - 45:15 identifying - 48:12 identity - 25:25 illness - 8:12 imaginable - 32:22 Imagine - 73:22 imagine - 50:16 immediate - 5:11 immunized - 87:11 impairment - 8:12, 8:16 impartial - 27:4 impeach - 85:12 importance - 46:25, 48:12 important - 41:21, 41:22, 45:14, 46:6, 46:9, 46:14, 47:16, 49:20, 50:12, 50:24, 52:7, 58:23, 72:1, 73:18, 78:1, 78:2, 81:8, 85:22, 93:12 impossible - 74:19, 75:9 impressed - 62:5 impression - 77:8, 77:9 improper - 92:21 include - 64:1 included - 37:15, 37:19, 37:21, 38:9, 38:17, 39:14, 58:1, 107:9 includes - 41:6, 41:22 includes - 7:15, 7:20, 23:17 including - 6:23 incredible - 57:7 Index - 1:11, 1:13 indicate - 75:6 indicating - 85:14 indicted - 26:22 indictment - 4:17, 16:21, 25:19, 26:2, 26:11, 28:20, 29:3, 75:12, 75:24, 96:24, 102:6, 105:19, 105:20, 105:22 individual - 4:24, 5:2, 32:23, 33:1, 33:2 individually - 30:19 individuals - 85:5 induced - 7:22 inference - 26:23 inferred - 10:25 inflict - 5:24, 20:25, 21:13, 22:6, 22:19 inflicted - 34:14 inflicting - 8:7 information - 28:5, 30:4, 96:8 injuries - 66:21, 80:1, 80:17, 81:1 injury - 4:24, 5:24, 6:16, 8:8, 8:10, 8:11, 8:13, 17:24, 18:9, 19:14, 19:23, 20:25, 21:13, 22:6, 22:19, 66:25, 67:2 injustice - 61:8 innate - 87:16 innocence - 1:16, 1:2, 26:24, 27:1, 28:19, 28:21, 106:10 innocent - 26:18, 42:7, 59:14 inspection - 101:19 instead - 56:8, 105:1 instinct - 87:14, 87:16	instruct - 69:20 instructed - 24:9, 25:11, 25:15, 26:4, 37:21, 69:17 instruction - 30:3, 35:16 instructions - 10:22, 27:15, 27:20 instrument - 11:11, 12:6, 14:3, 14:11, 15:4, 17:7, 17:14, 18:4, 18:13, 20:23, 21:12, 31:11, 43:20 insulting - 50:19 intend - 17:24, 18:8, 19:14, 19:22 intended - 5:17, 6:14, 6:15, 8:9, 11:9, 12:17, 95:18 intends - 4:24 intent - 5:14, 5:22, 6:3, 7:9, 7:25, 8:20, 9:2, 9:14, 10:8, 10:17, 10:23, 11:13, 12:20, 14:12, 15:24, 17:16, 18:14, 19:6, 20:3, 20:19, 20:24, 21:7, 21:12, 21:16, 21:25, 22:5, 22:13, 22:18, 22:22, 24:4, 25:24 intention - 11:18, 12:25 intentionally - 4:23, 4:25, 5:4, 5:6, 5:19, 5:21, 6:18, 8:18, 8:20, 8:23, 9:1, 9:9, 9:13, 12:4, 13:11, 13:25, 14:9, 15:2, 15:14, 15:22, 16:14, 17:5, 17:12, 18:1, 18:10, 18:22, 19:3, 19:16, 19:25, 20:18, 21:6, 21:24, 22:12, 31:9, 32:16, 34:14 interfere - 6:8 internally - 31:22 interpreter - 47:3 interpreter's - 100:6, 100:10 Interpreters - 2:21 intimidation - 6:12 intrude - 7:11 intuition - 53:17 invasion - 57:22 investigate - 63:19 investigated - 89:2 investigation - 63:21 investigators - 61:3 Investigators - 52:18 involved - 32:24, 63:17, 89:3 involvement - 38:22 islands - 47:4 isolate - 81:7 isolated - 87:4 issue - 28:21, 67:16 items - 3:18	22:13, 22:15, 22:17, 22:20, 31:9, 31:10, 32:16, 34:20, 34:22, 36:20, 37:1, 38:23, 39:11, 50:6, 80:1, 85:25, 87:20, 88:24, 96:1, 98:12, 98:18, 99:3 Jr.'s - 95:15, 96:12 Judge - 70:19 Judge - 1:23, 3:20, 30:1, 30:6, 30:23, 35:12, 35:21, 36:8, 37:16, 41:23, 56:23, 61:19, 69:18, 69:20, 79:1, 83:24, 84:15, 100:13, 105:23, 106:7 Judge's - 30:2 judges - 27:17, 70:18 Judicial - 1:12 July - 1:20, 1:3, 3:4 jumbo - 30:5, 62:15, 62:18, 62:20, 63:2, 69:17, 70:15 jumps - 66:7 junior - 91:12 juries - 62:6 Juror - 102:14, 102:16, 102:17, 102:19, 102:20, 102:22, 103:1, 103:3, 103:5, 103:7, 103:8, 103:10, 103:11, 103:13, 103:14, 103:16, 103:17, 103:19, 103:21, 103:23, 103:25, 104:3, 104:4, 104:6, 104:7, 104:8, 104:10, 104:11, 104:13, 104:14, 104:16 jurors - 27:2, 79:19 Jurors - 40:20 Jury - 1:6, 99:22 jury - 1:8, 3:1, 3:6, 3:22, 3:24, 4:6, 4:11, 4:16, 26:11, 27:21, 28:25, 29:1, 29:3, 29:5, 30:3, 30:12, 30:18, 31:20, 32:13, 32:19, 33:4, 33:5, 34:4, 34:5, 34:12, 35:12, 35:16, 35:20, 38:1, 38:7, 39:15, 39:18, 45:25, 60:6, 62:4, 62:8, 66:7, 71:10, 74:23, 77:23, 77:25, 78:3, 81:3, 84:1, 84:17, 85:15, 91:20, 92:12, 98:16, 98:17, 99:10, 99:14, 99:15, 99:19, 99:20, 99:23, 99:25, 100:2, 100:4, 100:7, 100:8, 100:17, 100:20, 100:24, 101:2, 101:5, 101:12, 101:23, 102:4, 102:8, 102:12, 104:19, 105:17, 105:19 Jury's - 101:25 justice - 30:7, 57:9, 98:24, 98:25 Justin - 2:4, 79:13, 92:15
	J Jennifer - 104:1 job - 29:21, 29:25, 80:14 Johnson - 89:17 Jordan - 103:5 Joshua - 103:1 Jr - 11:7, 11:10, 11:18, 11:19, 12:4, 12:5, 12:7, 12:8, 12:15, 12:18, 12:25, 13:11, 13:13, 13:14, 13:25, 14:1, 14:2, 14:9, 14:10, 15:3, 15:5, 15:6, 15:14, 15:15, 15:22, 15:23, 16:15, 16:16, 16:17, 17:6, 17:13, 17:14, 17:25, 18:1, 18:3, 18:9, 18:10, 18:12, 18:23, 19:4, 19:15, 19:16, 19:23, 19:24, 20:19, 20:20, 20:21, 20:23, 20:25, 21:1, 21:7, 21:9, 21:11, 21:14, 21:25, 22:1, 22:2, 22:4, 22:6, 22:7,	K Karen - 104:14 keep - 76:5 kidnapped - 32:17, 94:22 Kidnapping - 5:8 kidnapping - 5:18, 5:20, 9:10, 9:11, 11:7, 11:24, 12:7, 12:15, 13:6, 13:13, 13:25, 14:8, 14:21, 15:5, 15:14, 15:21, 16:8, 16:16, 20:13, 23:2, 23:6, 23:10, 29:6, 31:8, 33:17, 35:3, 36:19, 37:19, 37:23, 38:10, 38:13, 38:18, 38:22, 39:9, 41:6, 41:10, 41:15, 41:18, 53:24, 56:10, 56:24, 60:19, 94:20	

<p>kill - 34:20, 92:24, 94:7 killed - 32:8, 34:14, 34:16, 37:1, 39:4, 59:14, 76:14, 86:1, 96:1 killer - 81:14 killing - 11:19, 12:25, 59:21 kind - 32:10, 34:1, 35:8, 39:13, 43:18, 44:11, 44:25, 57:15, 76:1, 95:5, 96:24 Kind - 33:10 kinds - 51:17 kit - 68:15, 82:13, 90:12 kits - 67:21 knife - 59:19, 59:24, 59:25, 60:1 knowingly - 4:23, 4:25, 5:19, 5:21, 6:18, 8:24, 9:5, 9:10, 9:18, 9:22, 17:5, 17:12, 18:1, 18:11, 18:22, 19:4, 19:16, 19:25, 20:18, 21:6, 21:24, 22:12 knowledge - 9:5, 9:18, 9:22, 25:25, 28:5 known - 6:14, 11:17, 11:23, 12:3, 12:24, 13:5, 13:10, 14:6, 14:15, 14:19, 15:2, 15:19, 16:3, 16:6, 16:14, 17:11, 17:19, 18:7, 18:17, 19:2, 19:9, 19:22, 20:6, 21:5, 21:19, 22:11, 22:25, 24:16, 24:21, 82:7, 96:10, 98:3 knows - 56:17, 58:19, 95:6</p>	<p>left - 39:25, 44:15, 44:20, 49:10, 55:2, 60:14, 72:17, 87:5, 90:24, 95:19, 95:24, 99:14 legal - 30:5 legally - 7:21 legs - 83:2 Lemone - 51:1 Leonard - 104:11 less - 67:2 lessen - 51:17 lesser - 16:25, 20:12, 23:9, 37:15, 37:19, 37:21, 38:9, 38:17, 39:14, 41:6, 41:22 lesser-included - 37:15, 37:19, 37:21, 38:9, 38:17, 39:14 lesser-includeds - 41:6, 41:22 lessers - 63:4 liar - 56:2 liars - 66:20, 85:17 liberation - 6:3, 20:20, 21:8, 22:1, 22:14 liberty - 6:9 lie - 57:7 lies - 43:8, 61:9, 74:2 life - 5:1, 18:2, 18:12, 19:17, 20:1, 40:5, 40:12, 86:20, 87:18, 91:1, 94:1 light - 65:1, 65:4 light-skinned - 65:1 likely - 6:5, 20:21, 21:10, 22:2, 22:16, 50:6, 50:7, 52:11, 52:12 Linda - 36:23, 36:24, 37:3, 53:8, 96:3, 98:3 line - 50:12 lions - 95:22 list - 89:6 Listen - 78:13 listen - 4:9, 41:4, 79:18, 94:15 listened - 30:1, 78:15 listening - 40:22 literally - 93:18 lives - 94:6 living - 54:13, 94:10, 96:19 locked - 88:7 look - 36:6, 38:3, 39:15, 49:14, 52:9, 67:17, 71:5, 72:12, 81:16, 85:16, 90:10, 99:4, 105:19 looked - 47:15, 68:22, 95:2 looking - 46:14, 52:10, 52:11, 63:21, 64:16, 67:21, 83:21, 85:1, 89:16, 89:18, 96:7, 97:2, 98:4 lookout - 41:14, 41:16, 57:3 loose - 94:3, 94:10 loss - 8:15 lost - 49:20, 76:22, 95:11 Louisiana - 2:15 love - 77:20, 78:20, 90:25 lungs - 73:3</p>	<p>46:13, 48:2, 64:19, 64:23, 67:13 males - 45:17, 46:10, 47:8, 47:18, 50:24, 51:3, 51:12, 51:13, 51:15, 63:22, 64:3, 64:5, 64:14, 64:17, 67:12, 67:14, 83:22, 85:19 man - 44:12, 45:16, 46:22, 47:17, 47:23, 47:25, 48:24, 49:7, 49:9, 49:10, 50:9, 50:13, 53:15, 54:24, 56:19, 57:14, 61:8, 64:17, 64:23, 65:8, 65:9, 65:14, 65:16, 66:25, 72:21, 82:1, 82:6, 82:9, 82:10, 82:11, 83:4, 83:8, 83:13, 85:11, 85:22, 88:14, 95:2, 96:4, 98:17, 98:23, 99:5 Management - 8:5 manifestly - 8:6 liar - 56:2 manner - 6:15, 8:9, 12:18, 13:1, 13:12, 15:15, 15:23, 16:15, 18:23, 19:5, 19:18, 20:1, 22:4, 22:17, 31:11, 92:9, 93:6 Marilyn - 2:20 Mario - 2:14, 72:1 mark - 67:22, 75:5 marks - 43:23, 68:1, 68:3 marriages - 49:9 married - 49:9, 54:12, 54:14, 95:2 Martinez - 11:17, 11:23, 12:3, 12:24, 13:5, 13:10, 14:6, 14:15, 14:19, 15:1, 15:19, 16:2, 16:6, 16:13, 17:11, 17:19, 18:7, 18:17, 19:2, 19:9, 19:21, 20:6, 21:5, 21:19, 22:11, 22:25, 24:16, 24:21, 48:22 Martinez-santana - 11:17, 11:23, 12:3, 12:24, 13:5, 13:10, 14:6, 14:15, 14:19, 15:1, 15:19, 16:2, 16:6, 16:13, 17:11, 17:19, 18:7, 18:17, 19:2, 19:9, 19:21, 20:6, 21:5, 21:19, 22:11, 22:25, 24:16, 24:21, 48:22 Mary - 107:4, 107:21 mask - 44:13, 81:20, 81:23 masked - 81:17, 86:6 masks - 48:6, 48:7, 48:12, 57:18 match - 57:19, 82:13, 97:4, 97:5 matched - 83:5 matter - 90:13, 97:19 matters - 28:3 Matthew - 104:7 mean - 41:10, 41:23, 43:16, 50:8, 62:19, 67:24, 69:9, 69:25, 70:15, 75:24, 80:2, 80:18, 83:1, 97:14 means - 5:9, 6:2, 6:7, 6:12, 6:13, 6:20, 7:10, 7:13, 7:19, 8:2, 8:4, 8:6, 8:11, 8:13, 12:18, 13:1, 13:12, 15:16, 15:23, 16:15, 18:24, 19:5, 19:18, 20:2, 22:4, 22:18, 23:16, 24:7, 26:11, 31:12, 93:6 meant - 10:22, 62:18, 65:20 media - 89:3 medical - 43:14, 43:16, 68:8, 71:25, 72:16, 72:22, 73:10, 73:17, 74:16 medically - 73:7 medium - 65:1 meet - 40:25</p>	<p>Mehl - 68:21, 89:21, 89:24 Mel - 52:25 member - 8:16 members - 4:5, 27:22, 85:19, 99:15, 100:8, 101:12, 101:22, 104:18 Members - 4:16, 45:25 memory - 62:11 men - 65:5, 66:8, 81:17, 83:14, 83:19, 86:6 mental - 24:8 mention - 28:5, 91:5 mere - 5:15, 33:12 Mere - 10:11, 23:25 merely - 24:14, 24:24 message - 61:4, 100:24 met - 54:17 Mexican - 65:9, 85:8 Mexico - 47:5 middle - 40:6, 88:13, 96:5, 96:7 might - 31:21, 32:1, 42:6, 43:6, 43:24, 53:19, 54:10, 63:5, 64:2, 73:2 mind - 42:23, 78:6, 78:7, 78:8, 78:14, 78:17, 88:22 mine - 65:18 minute - 29:11 minutes - 30:2, 30:11, 40:1, 40:3, 40:5, 40:11, 61:15, 61:21, 61:24 mischaracterizes - 45:24, 60:3 Mischaracterizes - 64:6, 65:24, 74:21 Mischaracterizing - 75:18 misconceptions - 84:21 missed - 74:20 missing - 52:19 mistake - 25:25, 83:4 mix - 42:19 mom - 87:25 moment - 62:15, 65:11, 84:5 Monday - 3:4 money - 48:19, 48:25, 51:25, 52:2, 52:4, 52:6, 52:11, 55:2, 58:2, 58:4, 58:5, 58:9, 59:11, 63:17, 98:18 Montgomery - 103:11 month - 30:17, 51:21, 52:2, 87:1 months - 54:4, 54:11, 70:6, 94:4 morning - 3:4, 40:19, 40:20, 79:3, 79:24, 86:16, 94:20, 97:2, 105:2, 105:8, 105:24, 106:9 Most - 89:4 most - 36:13, 50:7, 72:20, 76:7, 87:14, 93:21, 93:25 mother - 40:8, 42:22, 42:23, 53:12, 58:7, 86:10 mother's - 53:17 motive - 25:24, 48:23, 48:24, 57:7, 59:10, 81:15 mouth - 6:23, 48:11 move - 95:10, 95:12 moved - 90:25 movements - 6:8 movie - 42:20 moving - 6:9 mud - 96:12 multiple - 54:17 multitude - 91:25 umbo - 30:5, 62:15, 62:18, 62:20, 63:2, 69:17, 70:15 umbo-jumbo - 30:5,</p>
<p>L</p> <p>Lab - 45:8, 68:17 Ladies - 29:15, 79:2, 79:15, 82:17, 83:7, 85:24, 87:13, 88:23, 89:20, 90:22, 91:17, 93:11, 95:5, 95:22, 97:20, 99:10 ladies - 4:7, 32:8, 81:9, 82:14, 88:12, 90:20, 91:22, 98:6, 98:19, 104:20 laid - 33:3, 92:13 lamb - 88:15 language - 30:8, 46:15, 63:20 large - 64:3, 64:18, 66:8 Larry - 103:5 last - 3:9, 28:24, 29:16, 30:2, 40:5, 40:11, 40:22, 69:8, 69:19, 77:8, 77:9, 79:14 lasted - 68:12, 69:2, 69:7 late - 55:9, 55:12 law - 4:8, 25:5, 26:24, 27:19, 30:13, 32:20, 32:21, 32:25, 33:3, 33:4, 33:6, 33:10, 33:11, 33:14, 34:1, 34:6, 34:12, 34:24, 35:1, 35:7, 35:9, 35:16, 36:2, 36:8, 37:13, 37:14, 37:20, 56:23, 69:21, 70:15, 70:19, 70:22, 71:3, 71:20, 71:23, 77:16 lawyer - 30:9, 54:16, 72:5, 72:8 lawyers - 29:7, 61:24, 62:2, 62:3, 70:17, 70:18, 100:9 learned - 90:10 lease - 49:14 least - 56:22, 56:24, 57:3 leave - 39:22, 40:4, 60:13, 60:22, 68:1, 80:12, 98:22, 99:1 leaving - 76:1, 79:10</p>	<p>M</p> <p>ma'am - 101:4 mad - 52:16, 52:22 Madrid - 2:14, 40:16, 40:17, 40:19, 40:21, 46:5, 58:21, 60:9, 61:17, 72:1, 81:14 Magge - 1:22 main - 92:12 major - 73:24, 83:5 male - 45:18, 46:11, 46:12,</p>		

62:15, 62:18, 62:20, 63:2, 69:17, 70:15 murder - 4:18, 4:22, 5:4, 5:6, 8:19, 8:24, 11:3, 11:15, 12:8, 12:22, 13:14, 13:19, 15:5, 16:16, 16:21, 17:1, 20:8, 23:5, 23:9, 29:2, 29:4, 30:25, 31:13, 33:20, 33:22, 33:23, 34:22, 34:23, 35:5, 37:17, 37:18, 37:23, 37:25, 38:7, 38:10, 38:12, 38:14, 38:18, 38:21, 39:11, 39:18, 41:6, 41:10, 41:13, 41:19, 43:11, 56:9, 60:19, 60:20, 61:11, 70:11, 74:1, 80:2, 80:19, 93:17, 94:4, 99:8, 102:5 must - 11:3, 11:11, 11:19, 12:11, 12:18, 13:1, 23:8, 24:14, 24:25, 25:2, 25:12, 27:6, 27:8, 27:20, 28:2, 28:12, 52:21, 76:4, 80:2, 80:18, 88:22	numbers - 102:20 nurse - 44:24, 67:20, 80:16, 80:21, 80:23	85:3, 89:1, 89:10, 98:9 Official - 107:4, 107:16, 107:22 official - 63:23, 100:11 old - 51:21 Olga - 103:8 omission - 23:18, 24:7 once - 99:15, 106:4 Once - 64:8, 66:1, 84:16 One - 37:13, 54:23, 58:23, 64:3 one - 5:5, 5:22, 6:9, 6:19, 6:25, 10:11, 10:14, 10:15, 10:19, 10:23, 23:5, 24:1, 27:21, 28:8, 30:6, 30:21, 31:4, 31:16, 31:18, 31:25, 32:5, 32:9, 32:23, 33:1, 33:15, 33:19, 33:25, 34:13, 34:15, 35:3, 35:6, 39:22, 42:1, 43:16, 46:10, 47:23, 47:25, 48:7, 48:15, 49:24, 49:25, 50:19, 52:20, 53:7, 54:15, 54:17, 54:18, 54:23, 55:1, 61:7, 63:25, 65:22, 66:8, 69:1, 72:22, 75:10, 75:11, 76:7, 77:14, 78:7, 81:13, 81:14, 81:19, 82:18, 87:18, 92:17, 93:8, 93:16, 95:18, 95:21, 96:18 one-way - 95:18 Open - 3:1, 3:24, 99:23, 100:2, 100:20, 101:5, 105:17 open - 77:4, 78:13, 107:12 opening - 42:16, 42:21, 72:7, 74:9, 105:25 opinion - 78:1, 78:10, 78:11, 78:13, 105:13 opinions - 78:5 opportunity - 25:24, 34:8, 77:20, 77:21 option - 93:15 organ - 6:19, 6:21, 8:17 organism - 62:4 original - 4:10, 33:25, 35:6, 51:13, 97:3 otherwise - 26:22 Outside - 80:24 outside - 24:20, 83:25, 84:14, 87:25, 105:18 overnight - 7:14 Overruled - 81:2 overruled - 46:4, 66:1, 92:22 own - 10:3, 23:24, 25:6, 58:14, 70:25, 78:16, 78:17 Owner - 8:2 owner - 7:8, 7:21, 7:25 owner's - 8:1	paralyzed - 88:18 parent - 87:15 parents - 53:18 part - 7:11, 23:19, 42:10, 63:6, 63:7, 63:21, 63:23, 70:23, 79:9, 80:8, 80:9, 85:6, 94:17 participate - 7:1, 7:3 participated - 23:21 participates - 33:1 participating - 34:21 parties - 9:25, 11:1, 32:20, 32:25, 33:3, 33:6, 33:11, 34:12, 34:25, 107:9, 107:15 parts - 62:5, 81:7 party - 3:12, 10:2, 10:11, 23:17, 23:23, 24:1, 33:8, 33:14, 34:22, 45:6, 92:7, 92:18 pass - 44:1 passed - 86:12, 86:14, 86:18 passes - 58:12 passing - 26:7, 26:14 pause - 50:20 paused - 51:4 pending - 95:24 penetration - 6:19 penitentiary - 56:1, 58:3 Pennsylvania - 56:1, 70:4, 73:22 people - 44:9, 44:14, 46:7, 46:14, 46:17, 47:10, 47:13, 48:4, 48:12, 48:14, 48:17, 48:24, 50:1, 52:12, 61:3, 64:20, 64:24, 65:6, 66:9, 74:6, 76:18, 86:1, 86:24, 89:17 percent - 80:21 percentage - 80:22 perception - 57:13 perfect - 96:17 perfectly - 36:1, 93:6 periods - 81:24 permanent - 8:15 permit - 29:7 perplexing - 81:12 Perry - 3:23, 46:11, 100:18, 102:25, 105:15 person - 4:22, 5:3, 5:5, 5:14, 5:18, 5:19, 5:20, 5:21, 5:25, 6:3, 6:14, 6:17, 6:18, 6:20, 6:22, 6:23, 6:25, 7:3, 7:4, 7:5, 7:7, 7:21, 8:2, 8:19, 9:1, 9:5, 9:13, 9:18, 9:22, 10:2, 10:6, 10:10, 21:1, 21:14, 22:7, 22:20, 23:22, 24:2, 24:6, 26:19, 28:6, 33:7, 33:8, 33:13, 47:21, 52:20, 54:18, 61:5, 61:6, 65:3, 73:3, 76:11, 83:3, 85:18, 89:11, 94:8 person's - 6:8, 6:20, 6:22, 85:17 personal - 28:5, 93:25 personally - 34:15, 87:19 persons - 7:15, 9:25, 10:23, 23:17, 26:18 phase - 3:6, 50:18, 104:21, 104:22, 104:23, 104:25, 105:2, 105:9, 106:2 Phone - 2:7, 2:13, 2:16 physical - 7:1, 7:11, 8:11, 8:12, 44:25, 68:10, 83:10 pick - 68:22 picnic - 87:24, 91:9 picture - 42:5, 43:10, 67:3, 72:3 pictures - 52:9 piece - 54:5
N nailed - 97:16 name - 85:25, 89:6 namely - 11:11, 12:6, 14:2, 14:11, 15:4, 17:7, 17:14, 18:2, 18:3, 18:12, 18:13, 19:17, 20:1, 20:23, 21:11, 31:10 names - 102:13, 102:24, 102:25 Nancee - 103:14 Natalie - 2:3, 29:23, 30:15, 31:2 natural - 73:8 nature - 9:14, 9:19, 9:21 necessarily - 64:21 need - 94:25, 106:5 negotiate - 97:6 neighbor - 51:2 neighbors - 59:4, 87:23, 88:1, 88:2 Never - 66:12, 66:14 never - 26:17, 47:17, 52:22, 52:23, 53:2, 53:4, 53:5, 56:5, 56:19, 65:21, 66:13, 76:20, 80:7, 86:21, 89:22, 95:18 news - 86:3, 87:2, 87:3 next - 16:24, 20:11, 54:9, 55:2, 86:13 nice - 69:25, 70:8 Nice - 74:4 night - 36:16, 39:2, 40:7, 52:9, 57:21, 69:9, 81:18, 82:11, 82:15, 83:3, 83:16, 84:12, 84:21, 86:22, 87:7, 88:14, 96:5, 96:7 Ninja - 87:22 nobody - 42:8, 45:16, 59:15 Nobody - 45:2, 90:9 None - 71:21 normal - 85:8 nose - 67:9, 67:11, 87:21 note - 41:5, 100:4 nothing - 39:10, 45:4, 45:5, 45:8, 53:6, 56:7, 68:25, 73:1, 74:11, 83:8, 96:22, 96:24, 97:3, 97:8, 105:20 Nothing - 67:13, 72:23, 97:5 notice - 92:2 November - 42:17 numbered - 1:22, 107:11	O oath - 63:1 Obel - 1:6, 3:3, 4:2, 4:14, 4:16, 11:13, 11:21, 12:20, 13:3, 13:23, 14:12, 14:18, 15:12, 15:24, 16:5, 17:4, 17:15, 17:23, 18:14, 18:21, 19:5, 19:13, 20:2, 20:17, 21:15, 21:23, 22:21, 28:25, 29:2, 29:4, 29:5, 31:6, 41:21, 44:8, 48:4, 48:17, 50:5, 52:13, 52:16, 52:21, 52:24, 53:6, 54:2, 54:4, 54:19, 55:12, 56:15, 59:7, 59:8, 59:11, 59:22, 59:23, 59:25, 60:13, 61:13, 65:13, 65:14, 80:18, 82:17, 82:22, 89:10, 89:15, 89:16, 90:1, 91:3, 100:25, 101:8, 102:1, 102:4, 102:5 object - 7:11, 43:21, 83:24 Object - 45:23, 58:18, 60:2, 64:6, 65:24, 71:10, 74:21, 75:17, 80:24, 92:20 objection - 100:12, 100:13, 100:15 objections - 3:14, 3:19, 3:20 objective - 8:21, 9:3, 9:16 Obviously - 42:3 occasion - 11:5, 11:20, 12:13, 13:2 occupied - 7:16, 49:17 occurred - 35:4, 94:20, 107:11 occurrences - 92:5, 92:6 occurs - 5:10, 5:13 October - 86:1, 86:14, 86:16, 86:23, 98:15, 107:17 odds - 90:5 offense - 4:18, 4:22, 5:3, 5:7, 5:12, 5:13, 5:14, 5:17, 5:18, 5:20, 6:17, 7:7, 8:19, 9:25, 10:1, 10:3, 10:7, 10:9, 10:10, 10:12, 10:17, 10:24, 11:7, 11:14, 11:24, 12:9, 12:15, 12:21, 13:6, 13:15, 13:19, 14:13, 14:16, 14:20, 15:7, 15:25, 16:3, 16:7, 16:18, 17:1, 17:17, 17:20, 18:15, 18:18, 19:7, 19:10, 20:4, 20:7, 20:13, 21:17, 21:20, 22:23, 23:1, 23:9, 23:12, 23:20, 23:23, 24:1, 24:2, 24:5, 24:6, 24:12, 24:14, 24:17, 24:22, 24:23, 24:25, 25:3, 25:17, 25:18, 25:22, 26:2, 26:19, 26:20, 26:22, 27:7, 30:22, 30:24, 31:4, 33:2, 33:3, 33:9, 33:13, 33:23, 34:24, 36:5, 36:22, 37:3, 37:5, 37:17, 37:22, 37:24, 38:6, 38:14, 38:20, 39:9 offenses - 8:24, 9:10, 23:7, 25:17, 25:22, 37:15, 37:18, 37:20, 37:22, 38:10, 38:18, 39:14 offensive - 62:19 offer - 56:7 offered - 56:5, 57:5, 96:20, 97:8 officer - 28:9, 28:11, 28:14, 28:15, 54:15 officers - 84:20, 84:25,	P packaged - 68:23 packing - 95:9, 95:12 Page - 1:3, 33:5, 34:4, 35:17, 92:12 page - 28:24, 43:17 pages - 28:25, 30:4, 34:6, 35:10, 39:15, 39:18, 41:4 pain - 8:11 pajamas - 87:7 pant - 43:7 panties - 36:16, 44:22, 83:5, 90:21 pants - 43:5, 76:4, 76:5, 76:13 pantyhose - 48:8, 48:9, 48:10 paragraph - 5:5, 92:3, 105:21	

<p>pillowcase - 67:4, 86:8 pistol - 73:24, 86:9 pistol-whip - 86:9 place - 6:4, 6:10, 20:21, 21:9, 22:2, 22:15, 36:20, 60:17, 69:4, 86:4, 90:18 placed - 4:10 Places - 65:7 places - 80:5 plan - 25:24 play - 42:10 playing - 74:9 plays - 32:22, 34:2, 38:19 pleaded - 4:20 pleasure - 49:4 plenty - 34:7, 60:25 plus - 30:17 point - 40:23, 41:2, 41:25, 51:18, 69:9, 75:7, 79:24, 85:2, 99:16 pointing - 72:11 points - 30:12, 30:19, 56:18 Police - 63:18 police - 42:25, 48:15, 51:9, 52:15, 54:17, 60:16, 63:23, 65:17, 94:18, 94:19, 95:1, 98:8, 98:9 poll - 102:12 polled - 102:9 Polling - 1:8 pondering - 95:13 poor - 72:3, 72:10 portion - 7:16 portions - 107:8 portray - 57:15 possession - 8:3 Possession - 8:4 possible - 27:10, 90:15 possibly - 42:25 post - 88:8 predict - 62:2 preparation - 5:15, 25:24 prepare - 70:16 prepared - 28:12, 79:3 presence - 10:11, 23:25, 33:12, 105:19 present - 3:1, 3:4, 3:24, 4:5, 4:6, 7:5, 23:21, 99:15, 99:23, 100:2, 100:20, 100:23, 101:5, 101:11, 101:12, 105:17 presented - 79:15 presenting - 106:1 preside - 27:23 presiding - 1:23 pressure - 42:7 pressured - 42:11 presumed - 26:18 presumption - 26:25 pretty - 50:19, 68:22, 68:23, 73:21, 73:23, 74:6, 81:12, 90:4 prevent - 6:3, 20:19, 21:8, 21:25, 22:14 primary - 89:11 prison - 55:15, 57:23, 57:24, 58:8, 60:21, 70:4 pristine - 90:8 problem - 49:10, 65:16 proceed - 3:5, 4:1, 29:9, 40:17, 61:18, 75:2, 78:24, 105:4, 105:25 proceeded - 86:9 Proceedings - 1:16, 1:24, 1:2 proceedings - 1:21, 106:10, 107:8, 107:14 produce - 26:25 profile - 83:4, 83:5</p>	<p>profound - 72:20 profoundly - 62:5 promise - 80:14 promote - 10:8, 11:14, 12:21, 14:12, 15:25, 17:16, 18:14, 19:6, 20:3, 21:16, 22:22, 24:4 proof - 26:15, 27:11, 43:24, 55:5, 72:6, 73:17, 77:4, 77:11 property - 7:25, 8:1, 8:3, 8:5, 90:9 prosecution - 26:13, 27:5, 27:9 prosecution's - 27:11 prosecutor - 79:12 protect - 53:18, 55:20, 87:14 protracted - 8:15 prove - 26:24, 27:9, 31:3, 43:19, 44:2, 44:6, 44:8, 44:16, 44:20, 44:22, 44:23, 44:24, 45:9, 62:21, 62:22, 63:3, 69:13, 72:7 proved - 26:20, 27:17, 31:2 proven - 31:16, 60:24, 62:25 Proverbs - 95:20 provides - 25:5 proving - 27:5, 27:6 Puerto - 46:17, 47:1, 47:4, 47:12, 89:18, 95:13 punishment - 104:23, 104:25, 105:2, 105:9, 106:2 purpose - 8:7, 10:18, 25:14, 25:20, 26:3, 26:6, 26:10, 33:24 pursues - 11:25, 13:7, 14:22, 16:9 pursues - 95:21 pushed - 57:14, 57:15, 57:20, 59:7 put - 3:18, 41:23, 42:5, 48:5, 53:7, 64:2, 64:3, 64:4, 64:13, 64:14, 67:2, 70:19, 75:11, 75:12, 82:2, 84:11, 86:8, 86:15, 88:7, 88:20, 89:1, 90:14, 90:20, 97:1, 98:10, 98:16, 99:7, 106:5 Put - 98:16 puts - 97:11, 98:4 putting - 89:4, 92:20 Pyper - 103:14</p>	<p>read - 4:8, 4:10, 30:2, 30:6, 34:8, 41:4, 92:2, 105:20 readily - 94:14 reading - 3:5, 56:22 reads - 28:25, 34:2 ready - 3:22, 3:23, 4:1, 105:25, 106:3 real - 50:11, 83:17 realized - 37:16 really - 29:16, 39:15, 40:12, 42:16, 43:15, 43:19, 47:10, 47:22, 48:2, 48:5, 48:15, 48:21, 49:13, 49:14, 83:15, 92:17, 93:22 reason - 46:6, 46:9, 47:16, 48:18, 49:18, 52:13, 52:22, 53:5, 54:23, 55:7, 58:22, 59:5, 59:9, 60:21, 60:22, 62:17, 89:9, 89:10, 96:18, 97:5 reasonable - 11:4, 11:12, 11:20, 12:12, 12:19, 13:2, 13:21, 14:4, 14:17, 15:10, 15:17, 16:4, 16:23, 17:2, 17:8, 17:21, 18:5, 18:19, 18:25, 19:11, 19:19, 20:10, 20:15, 21:2, 21:21, 22:8, 23:4, 23:6, 23:11, 25:2, 25:21, 26:20, 27:2, 27:7, 27:11, 27:13, 30:22, 31:3, 31:17, 31:19, 31:24, 32:4, 32:5, 44:5, 60:25, 62:23, 63:1, 63:5, 63:6, 63:11, 70:21, 77:12, 78:15, 78:17, 78:21, 98:7 reasonably - 9:7, 9:24 reasons - 90:1 receive - 27:19 received - 100:4, 100:24, 101:14 Received - 1:7 recess - 99:21, 99:25, 105:1, 105:8, 106:9 Recess - 100:1, 100:19 recollection - 64:12 reconstruct - 63:11 Record - 1:1, 107:10, 107:13 record - 3:2, 3:15, 3:18, 4:3, 68:24, 80:25, 83:25, 84:14, 100:3, 100:11, 100:21, 101:7, 101:9, 106:5 recorded - 65:23 recovered - 74:18 refer - 25:12 reference - 85:4 referred - 64:20 reflect - 4:3, 100:21, 101:9 reflects - 107:14 regarding - 25:16, 41:5, 50:12 regular - 48:11 relate - 28:3, 35:9, 70:25 relates - 30:25, 32:25, 34:11, 34:24 relating - 31:14 relations - 44:23, 45:3 relationship - 53:2, 82:23, 90:25 relative - 8:18, 8:24, 9:10, 28:12 released - 73:23, 105:7, 105:14 relevant - 39:19, 41:9 rely - 46:2, 60:6, 64:9, 74:25, 84:2, 84:18 remainder - 61:22 remains - 43:18, 72:17, 87:6</p>	<p>remember - 30:21, 31:18, 35:20, 37:25, 42:14, 42:19, 43:5, 43:22, 44:7, 44:9, 46:5, 46:21, 48:13, 49:22, 50:5, 50:15, 51:1, 51:5, 51:6, 51:15, 51:16, 51:20, 52:4, 52:5, 53:10, 54:16, 55:10, 55:21, 55:23, 55:24, 57:13, 57:17, 57:23, 58:12, 62:6, 66:5, 75:4, 79:7, 79:9, 80:3, 86:11, 86:12, 86:17 Remember - 55:8, 59:18, 61:7, 67:4, 76:21, 80:4, 83:17, 84:10, 91:4 remembers - 86:19 remind - 60:5, 60:7, 74:23, 79:18, 81:2, 84:4, 105:10 reminded - 46:1, 66:2 Renee - 1:22 rent - 55:2 reopened - 89:21 report - 43:16, 63:23, 65:17, 65:21, 84:8 reported - 1:24, 107:12 Reporter - 107:4, 107:22 Reporter's - 1:1, 1:9, 107:1, 107:10, 107:13 Republic - 37:9, 46:17, 54:11, 55:5, 57:11, 94:4, 94:5, 94:9 requested - 107:8 require - 26:24 required - 27:9, 27:10 requires - 69:22 residents - 49:17 resolve - 23:8, 99:5 Respect - 78:4 respect - 8:20, 9:2, 9:6, 9:14, 9:19, 9:23, 72:20 respective - 107:15 respond - 77:17, 77:18, 79:4, 94:23, 95:8 response - 100:6, 100:7, 100:10 responsibility - 72:9 responsible - 10:2, 10:5, 10:6, 23:22, 23:25, 24:2, 32:15, 79:12, 79:14, 80:10 rest - 80:3, 81:10 restrain - 6:2, 6:7 Restraint - 6:10 restrict - 6:7, 28:20 rests - 26:16 result - 8:21, 8:22, 9:2, 9:4, 9:6, 9:8, 9:15, 9:17, 9:23, 9:24, 10:19, 12:11, 13:17, 15:8, 16:19, 90:17 results - 93:17 retire - 4:11, 27:21, 28:23 retired - 1:6, 28:10 retrieved - 90:8 return - 62:24, 77:13 returns - 3:23 revealed - 53:2 review - 35:24, 36:6, 36:10 rewrite - 72:18 Rhodes - 96:11 Ricans - 47:2, 47:12 Rico - 46:17, 47:4, 89:18, 95:13 ridiculous - 39:5, 59:17, 59:20 righteous - 95:21 rights - 77:11, 77:25 rings - 99:25 rise - 26:23, 105:16 risk - 8:14 Rn - 67:19 rob - 44:14 robbery - 57:22</p>
Q			
<p>quadrillion - 90:3 quality - 69:3, 90:6 questions - 28:16 quick - 41:2, 41:5, 66:11, 69:16 quiet - 88:15, 88:17, 88:20 quite - 29:25</p>			
R			
<p>race - 64:22, 64:23 raised - 94:5 ran - 55:17, 55:18 Randy - 96:11 ransacked - 52:8 rape - 36:18, 67:20, 68:15, 80:22, 82:13 raped - 45:2, 50:13, 82:12, 82:21, 82:25, 83:3, 86:10 rapes - 50:16 rapidly - 85:8 rat - 94:12 reached - 99:21, 100:25</p>			

<p>rock - 65:10, 96:11 Rode - 88:4 Rodriguez - 107:4, 107:21 Rodriguez's - 37:6 Rogelio - 11:16, 11:22, 12:2, 12:23, 13:4, 13:9, 14:5, 14:14, 14:18, 15:1, 15:18, 16:2, 16:5, 16:13, 17:10, 17:18, 18:6, 18:16, 19:1, 19:8, 19:21, 20:5, 21:4, 21:18, 22:10, 22:24, 59:21, 59:24, 61:7 Roger - 34:20, 82:3, 92:24 Rolando - 2:20 role - 55:11 room - 4:11, 27:21, 40:24, 48:5, 81:25, 85:15, 90:9, 99:15, 99:20 roughly - 40:2 Rp - 2:11 Rudy - 11:17, 11:23, 12:3, 12:24, 13:5, 13:10, 14:6, 14:16, 14:19, 15:2, 15:19, 16:3, 16:6, 16:14, 17:11, 17:19, 18:7, 18:18, 19:2, 19:9, 19:22, 20:6, 21:5, 21:19, 22:11, 22:25, 24:17, 24:21, 32:6, 35:18, 35:25, 36:12, 40:9, 41:11, 41:13, 44:17, 48:7, 48:22, 53:9, 53:11, 53:22, 53:23, 53:25, 55:7, 55:8, 55:9, 55:10, 55:15, 55:22, 55:23, 55:24, 55:25, 56:2, 56:3, 56:5, 58:24, 58:25, 59:9, 59:12, 59:22, 60:1, 60:22, 61:6, 69:14, 69:25, 70:10, 70:12, 70:23, 70:25, 73:14, 73:21, 73:22, 74:6, 74:7, 74:8, 75:25, 76:8, 76:21, 76:22, 81:14, 82:1, 82:3, 82:4, 82:7, 82:9, 82:12, 82:13, 82:14, 82:15, 83:11, 92:16, 92:25, 93:3, 96:4, 96:6, 96:8, 96:13, 96:16, 96:22, 97:1, 97:6, 97:7, 98:1 Rudy's - 36:6, 37:11, 71:8, 71:11, 71:15, 73:19, 73:20 Rudys - 71:8, 71:9, 71:18, 71:19 rule - 70:24, 71:17 run - 98:23 running - 83:2, 88:9</p>	<p>42:21, 53:25, 81:16, 83:11, 97:3 school - 50:7 screams - 86:18, 86:19 screen - 84:9, 84:10, 84:11 script - 41:11 seat - 59:22, 59:23, 88:21, 95:15 seated - 3:25, 4:6, 60:4, 60:10, 99:24, 101:1, 101:6, 101:13 second - 41:25, 47:21, 69:16, 82:10, 82:11, 91:5, 92:16, 104:22 secreting - 6:4, 20:20, 21:8, 22:1, 22:14 section - 63:23 secured - 7:15 see - 34:2, 42:6, 49:23, 55:3, 55:4, 67:21, 71:5, 76:3, 79:25, 81:22, 88:4, 88:8, 88:9, 88:12, 91:6, 92:11, 93:1, 94:22 select - 27:21, 99:17 selection - 30:18, 32:20, 35:12, 35:20, 38:1 self - 56:2, 61:9, 66:19 self-admitted - 66:19 self-serving - 56:2, 61:9 sell - 74:13, 95:16 selling - 60:17 send - 61:4 sense - 38:23, 39:5, 39:6, 39:8, 39:12, 44:18, 47:10, 48:2, 48:21, 49:13, 49:15, 57:17, 57:22, 59:12, 59:13, 83:12, 93:2 sent - 100:16 sentence - 58:1 separately - 7:15 September - 4:19, 13:22, 14:5, 14:24, 15:11, 15:18, 16:11, 17:3, 17:9, 17:22, 18:6, 18:20, 19:1, 19:12, 19:20, 20:16, 21:3, 21:22, 22:9, 31:5, 34:19, 36:18, 39:2, 39:24, 50:7, 63:16 Sergeant - 45:13, 45:14, 45:19, 45:24, 46:7, 52:17, 52:25, 63:24, 65:19, 65:25, 68:21, 83:16, 83:20, 84:6, 84:8, 89:21, 89:24, 96:22, 97:15 serious - 4:24, 6:16, 8:8, 8:10, 8:15, 17:24, 18:8, 19:14, 19:23 Serious - 8:13 serving - 56:2, 61:9 set - 71:4 settle - 66:4 seven - 70:5, 92:13 several - 34:6, 35:10 sex - 91:10 sexual - 6:17, 6:19, 6:21, 6:24, 8:24, 11:24, 13:6, 14:21, 16:8, 33:18, 35:4, 36:17, 44:22, 44:23, 45:3, 45:7, 45:13, 66:24, 68:7, 82:19, 90:11, 93:14, 93:16 Sexual - 5:25, 7:10 sexually - 48:20, 66:22, 67:17, 67:22, 67:23, 67:24, 68:1, 68:9, 68:10, 69:14 shall - 27:19, 28:13 shame - 72:17, 97:24 shameful - 93:25 Share - 78:11 share - 78:12 sharp - 11:11, 12:6, 14:2,</p>	<p>14:11, 15:4, 17:7, 17:14, 18:3, 18:13, 20:23, 21:11, 31:11, 43:20 shifts - 26:17 shock - 40:11 shocked - 86:25 shocking - 86:3 shoes - 88:10 shortest - 61:25 shorthand - 1:25 shortly - 36:25, 39:20, 50:14, 53:8 show - 45:4, 45:5, 58:13, 74:17, 80:1 Show - 84:7 showed - 58:14 shown - 28:7 shows - 24:14, 24:24, 60:11 shred - 72:22 sick - 96:19 side - 39:7, 57:20, 58:16, 102:7 Signed - 100:8 signed - 28:13 signing - 28:1 Silence - 95:8 similar - 33:10 Sims - 104:1 sincere - 74:5 single - 72:22, 74:20 sit - 30:14, 39:20, 39:21, 41:1, 41:3, 77:1, 98:21 sitting - 49:23, 55:25, 95:16 situation - 68:3 ski - 44:13 skilled - 67:19 skills - 63:20 skin - 64:22, 64:23, 65:3, 66:9, 81:21, 85:6, 85:13 skinned - 64:25, 65:1, 67:14, 82:3 Skip - 61:15 sky - 87:21 sleeping - 86:6 sliced - 93:4 slightly - 85:7 smart - 62:10, 74:7, 76:16 smoker - 44:19 snatched - 86:23 sobs - 93:25 society - 87:15, 88:24 sold - 59:1, 76:18 sole - 28:18 solely - 28:21, 71:18, 71:19 solicited - 11:15, 12:22, 14:13, 16:1, 17:17, 18:15, 19:7, 20:4, 21:17, 22:23 solicits - 10:9, 24:5, 33:7 someone - 47:9, 67:21, 82:4, 85:13, 87:17, 98:17 sometime - 69:9 somewhere - 34:3, 40:1, 91:10 son - 43:1, 50:8, 53:23, 91:8, 95:12, 98:12 soon - 3:22, 56:13, 57:11, 95:1 sorry - 70:16, 86:11, 94:7, 103:24 sort - 30:10 sound - 52:1, 53:14, 58:4 sounds - 30:9 Spanish - 46:18, 46:24, 47:2, 47:9, 47:13, 65:7, 67:13, 85:7, 85:8, 100:7 Spanish-speaking - 65:7, 67:13, 100:7</p>	<p>speaking - 65:7, 67:13, 100:7 specialized - 67:19 specific - 5:14, 62:21, 90:19 specifically - 11:9, 12:17, 63:2, 89:19 spend - 85:15 spent - 40:11 sperm - 69:7, 69:10, 90:20 Spiderman - 87:22 stabbed - 34:15, 74:19, 75:6, 75:9, 75:12, 75:13, 75:25, 76:1, 80:6, 92:7, 93:4 stabbing - 11:10, 11:17, 12:5, 14:1, 14:10, 15:3, 17:6, 17:13, 18:2, 18:12, 31:10 stacked - 70:7 stamped - 3:11, 3:13 stand - 46:3, 60:7, 64:9, 64:17, 75:1, 75:7, 79:16, 81:4, 82:2, 84:2, 84:18, 93:24, 98:7, 98:10, 98:12, 98:14, 98:17, 98:21, 99:2, 99:4, 99:20 standing - 40:3, 71:2, 102:2 standpoint - 73:11 stands - 4:17 start - 51:7, 66:18, 73:25, 89:24, 103:1 started - 37:18, 42:15, 45:11, 72:1, 76:23, 89:24 starts - 35:16, 56:16 state - 24:8, 76:11 State - 1:11, 2:7, 3:3, 3:17, 4:2, 4:4, 4:13, 26:16, 41:12, 43:8, 44:1, 44:21, 45:11, 47:16, 48:15, 54:6, 56:3, 58:10, 60:24, 61:2, 63:9, 72:11, 77:3, 96:20, 97:12, 100:22, 101:8, 101:10, 102:3, 102:7, 107:2, 107:5 State's - 1:4, 1:5, 29:14, 44:7, 49:14, 62:3, 78:25 Statement - 29:14, 40:18, 78:25 statement - 46:19, 58:13, 58:14, 58:15, 58:19, 67:23, 72:2, 72:7, 76:14, 86:13, 86:16, 97:8 stations - 89:3 Stay - 58:20, 75:19 stay - 95:17 steal - 48:19, 52:13 steep - 90:4 step - 38:16, 47:19, 99:19 stepfather - 86:9 stick - 78:17, 78:19 still - 91:1, 93:10, 104:24 stones - 96:15 stood - 74:16, 79:23 stop - 38:15, 93:18 store - 51:4, 53:14, 53:23 stored - 68:19, 90:8, 90:12, 90:16 stories - 89:4 story - 35:25, 41:12, 44:11, 48:10, 58:11, 58:23, 59:18, 59:20, 59:21, 60:12, 63:18, 74:13, 74:15, 76:5, 76:12, 79:9, 79:13, 80:8, 80:9, 80:10, 80:11, 80:16, 81:6, 86:3, 86:24, 87:9, 90:23, 91:2, 98:15 straight - 72:24, 76:6 strange - 82:7 straw - 83:8, 83:13, 85:11, 85:22</p>
S			
<p>sad - 67:8, 72:2 safely - 90:5 safest - 86:5 Sanchez - 103:8 Sane - 44:24, 80:16, 80:20, 80:23 santana - 11:17, 11:23, 12:3, 12:24, 13:5, 13:10, 14:6, 14:15, 14:19, 15:1, 15:19, 16:2, 16:6, 16:13, 17:11, 17:19, 18:7, 18:17, 19:2, 19:9, 19:21, 20:6, 21:5, 21:19, 22:11, 22:25, 24:16, 24:21 Santana - 48:22 sat - 40:7, 40:21 satisfied - 27:2 saw - 42:4, 55:17, 58:21, 74:9, 81:19, 81:20, 81:21, 81:25, 85:13, 85:17 Sbot - 2:4, 2:5, 2:12, 2:15 scared - 43:4 scenario - 47:20, 47:25 scene - 33:12, 34:19,</p>	<p>42:21, 53:25, 81:16, 83:11, 97:3 school - 50:7 screams - 86:18, 86:19 screen - 84:9, 84:10, 84:11 script - 41:11 seat - 59:22, 59:23, 88:21, 95:15 seated - 3:25, 4:6, 60:4, 60:10, 99:24, 101:1, 101:6, 101:13 second - 41:25, 47:21, 69:16, 82:10, 82:11, 91:5, 92:16, 104:22 secreting - 6:4, 20:20, 21:8, 22:1, 22:14 section - 63:23 secured - 7:15 see - 34:2, 42:6, 49:23, 55:3, 55:4, 67:21, 71:5, 76:3, 79:25, 81:22, 88:4, 88:8, 88:9, 88:12, 91:6, 92:11, 93:1, 94:22 select - 27:21, 99:17 selection - 30:18, 32:20, 35:12, 35:20, 38:1 self - 56:2, 61:9, 66:19 self-admitted - 66:19 self-serving - 56:2, 61:9 sell - 74:13, 95:16 selling - 60:17 send - 61:4 sense - 38:23, 39:5, 39:6, 39:8, 39:12, 44:18, 47:10, 48:2, 48:21, 49:13, 49:15, 57:17, 57:22, 59:12, 59:13, 83:12, 93:2 sent - 100:16 sentence - 58:1 separately - 7:15 September - 4:19, 13:22, 14:5, 14:24, 15:11, 15:18, 16:11, 17:3, 17:9, 17:22, 18:6, 18:20, 19:1, 19:12, 19:20, 20:16, 21:3, 21:22, 22:9, 31:5, 34:19, 36:18, 39:2, 39:24, 50:7, 63:16 Sergeant - 45:13, 45:14, 45:19, 45:24, 46:7, 52:17, 52:25, 63:24, 65:19, 65:25, 68:21, 83:16, 83:20, 84:6, 84:8, 89:21, 89:24, 96:22, 97:15 serious - 4:24, 6:16, 8:8, 8:10, 8:15, 17:24, 18:8, 19:14, 19:23 Serious - 8:13 serving - 56:2, 61:9 set - 71:4 settle - 66:4 seven - 70:5, 92:13 several - 34:6, 35:10 sex - 91:10 sexual - 6:17, 6:19, 6:21, 6:24, 8:24, 11:24, 13:6, 14:21, 16:8, 33:18, 35:4, 36:17, 44:22, 44:23, 45:3, 45:7, 45:13, 66:24, 68:7, 82:19, 90:11, 93:14, 93:16 Sexual - 5:25, 7:10 sexually - 48:20, 66:22, 67:17, 67:22, 67:23, 67:24, 68:1, 68:9, 68:10, 69:14 shall - 27:19, 28:13 shame - 72:17, 97:24 shameful - 93:25 Share - 78:11 share - 78:12 sharp - 11:11, 12:6, 14:2,</p>	<p>14:11, 15:4, 17:7, 17:14, 18:3, 18:13, 20:23, 21:11, 31:11, 43:20 shifts - 26:17 shock - 40:11 shocked - 86:25 shocking - 86:3 shoes - 88:10 shortest - 61:25 shorthand - 1:25 shortly - 36:25, 39:20, 50:14, 53:8 show - 45:4, 45:5, 58:13, 74:17, 80:1 Show - 84:7 showed - 58:14 shown - 28:7 shows - 24:14, 24:24, 60:11 shred - 72:22 sick - 96:19 side - 39:7, 57:20, 58:16, 102:7 Signed - 100:8 signed - 28:13 signing - 28:1 Silence - 95:8 similar - 33:10 Sims - 104:1 sincere - 74:5 single - 72:22, 74:20 sit - 30:14, 39:20, 39:21, 41:1, 41:3, 77:1, 98:21 sitting - 49:23, 55:25, 95:16 situation - 68:3 ski - 44:13 skilled - 67:19 skills - 63:20 skin - 64:22, 64:23, 65:3, 66:9, 81:21, 85:6, 85:13 skinned - 64:25, 65:1, 67:14, 82:3 Skip - 61:15 sky - 87:21 sleeping - 86:6 sliced - 93:4 slightly - 85:7 smart - 62:10, 74:7, 76:16 smoker - 44:19 snatched - 86:23 sobs - 93:25 society - 87:15, 88:24 sold - 59:1, 76:18 sole - 28:18 solely - 28:21, 71:18, 71:19 solicited - 11:15, 12:22, 14:13, 16:1, 17:17, 18:15, 19:7, 20:4, 21:17, 22:23 solicits - 10:9, 24:5, 33:7 someone - 47:9, 67:21, 82:4, 85:13, 87:17, 98:17 sometime - 69:9 somewhere - 34:3, 40:1, 91:10 son - 43:1, 50:8, 53:23, 91:8, 95:12, 98:12 soon - 3:22, 56:13, 57:11, 95:1 sorry - 70:16, 86:11, 94:7, 103:24 sort - 30:10 sound - 52:1, 53:14, 58:4 sounds - 30:9 Spanish - 46:18, 46:24, 47:2, 47:9, 47:13, 65:7, 67:13, 85:7, 85:8, 100:7 Spanish-speaking - 65:7, 67:13, 100:7</p>	<p>speaking - 65:7, 67:13, 100:7 specialized - 67:19 specific - 5:14, 62:21, 90:19 specifically - 11:9, 12:17, 63:2, 89:19 spend - 85:15 spent - 40:11 sperm - 69:7, 69:10, 90:20 Spiderman - 87:22 stabbed - 34:15, 74:19, 75:6, 75:9, 75:12, 75:13, 75:25, 76:1, 80:6, 92:7, 93:4 stabbing - 11:10, 11:17, 12:5, 14:1, 14:10, 15:3, 17:6, 17:13, 18:2, 18:12, 31:10 stacked - 70:7 stamped - 3:11, 3:13 stand - 46:3, 60:7, 64:9, 64:17, 75:1, 75:7, 79:16, 81:4, 82:2, 84:2, 84:18, 93:24, 98:7, 98:10, 98:12, 98:14, 98:17, 98:21, 99:2, 99:4, 99:20 standing - 40:3, 71:2, 102:2 standpoint - 73:11 stands - 4:17 start - 51:7, 66:18, 73:25, 89:24, 103:1 started - 37:18, 42:15, 45:11, 72:1, 76:23, 89:24 starts - 35:16, 56:16 state - 24:8, 76:11 State - 1:11, 2:7, 3:3, 3:17, 4:2, 4:4, 4:13, 26:16, 41:12, 43:8, 44:1, 44:21, 45:11, 47:16, 48:15, 54:6, 56:3, 58:10, 60:24, 61:2, 63:9, 72:11, 77:3, 96:20, 97:12, 100:22, 101:8, 101:10, 102:3, 102:7, 107:2, 107:5 State's - 1:4, 1:5, 29:14, 44:7, 49:14, 62:3, 78:25 Statement - 29:14, 40:18, 78:25 statement - 46:19, 58:13, 58:14, 58:15, 58:19, 67:23, 72:2, 72:7, 76:14, 86:13, 86:16, 97:8 stations - 89:3 Stay - 58:20, 75:19 stay - 95:17 steal - 48:19, 52:13 steep - 90:4 step - 38:16, 47:19, 99:19 stepfather - 86:9 stick - 78:17, 78:19 still - 91:1, 93:10, 104:24 stones - 96:15 stood - 74:16, 79:23 stop - 38:15, 93:18 store - 51:4, 53:14, 53:23 stored - 68:19, 90:8, 90:12, 90:16 stories - 89:4 story - 35:25, 41:12, 44:11, 48:10, 58:11, 58:23, 59:18, 59:20, 59:21, 60:12, 63:18, 74:13, 74:15, 76:5, 76:12, 79:9, 79:13, 80:8, 80:9, 80:10, 80:11, 80:16, 81:6, 86:3, 86:24, 87:9, 90:23, 91:2, 98:15 straight - 72:24, 76:6 strange - 82:7 straw - 83:8, 83:13, 85:11, 85:22</p>

<p>stretch - 49:3, 50:2 string - 92:4, 92:5 strong - 91:15 structure - 7:13, 7:16, 7:17, 7:18 stuck - 55:18, 65:15, 72:19 stuff - 71:21, 81:15 styled - 107:11 subject - 105:11 submit - 7:1, 7:3, 38:11, 39:14, 92:11 submitted - 28:13, 99:17 substantial - 8:14 substantially - 6:9 sudden - 65:14, 81:13, 89:14 Sue - 104:14 sufficient - 24:13, 24:24, 27:1 suggest - 73:1, 84:22 suggestion - 77:23, 78:8 suggestions - 77:22 Suite - 2:15 summation - 77:7 supplied - 48:18 supplier - 91:11 supplying - 59:11 support - 67:22, 68:8, 91:14 supported - 83:10 supports - 68:6, 92:23 surmise - 60:15 surrounding - 9:20 suspect - 32:1, 84:9, 84:10, 89:12, 89:15 suspects - 84:11 suture - 67:3 swabs - 36:18, 44:22, 90:21 sweet - 87:20 sworn - 62:23 sympathy - 72:10 system - 30:7, 57:9 systems - 69:3</p>	<p>32:14, 35:15, 35:18, 36:2, 36:6, 36:10, 36:24, 37:3, 37:7, 37:11, 38:5, 45:24, 46:2, 48:3, 49:20, 52:23, 57:2, 57:20, 59:3, 60:3, 60:6, 62:9, 63:22, 64:3, 64:7, 64:9, 64:13, 65:25, 67:1, 67:5, 67:12, 68:6, 69:13, 71:2, 71:8, 71:11, 71:15, 71:25, 72:16, 74:22, 74:25, 75:4, 75:5, 81:3, 94:18, 96:21, 105:2 Texas - 1:11, 1:9, 1:23, 2:6, 2:7, 2:13, 2:16, 3:3, 4:2, 4:13, 4:15, 4:20, 13:22, 14:5, 14:24, 15:11, 15:18, 16:11, 17:3, 17:10, 17:22, 18:6, 18:21, 19:1, 19:12, 19:20, 20:16, 21:4, 21:22, 22:10, 31:6, 45:21, 85:9, 85:19, 87:5, 101:8, 102:3, 107:2, 107:6, 107:21, 107:24 theft - 7:10 Theft - 7:24 theirs - 65:21 themselves - 87:17, 98:16 thereby - 11:18, 12:25, 27:20 Therefore - 17:1, 20:14 thereof - 16:24, 20:11 thereon - 105:13 thereto - 23:17 they've - 91:15 thinking - 49:24, 73:4 third - 5:25, 45:6 thousands - 89:7 threat - 7:6, 96:23 threatened - 94:7 threatening - 6:5, 7:3, 20:22, 21:10, 22:3, 22:16 threats - 7:22 three - 5:25, 55:13, 60:10, 77:1 throat - 75:15, 93:4 throughout - 25:12, 26:16 throw - 59:24, 87:18 throwing - 76:2, 88:10 ticket - 95:18 tie - 97:3 tied - 86:8 ties - 93:13 tiniest - 36:8 tires - 32:6, 32:7 Tise - 2:3, 3:20, 29:9, 45:23, 58:18, 60:2, 64:6, 65:24, 71:10, 74:21, 75:17, 77:16, 78:24, 79:1, 81:1, 81:6, 84:4, 84:20, 92:23, 99:9, 100:14, 100:15, 102:11, 105:23, 106:3 Today - 98:19, 98:20 today - 79:5, 81:12, 81:13, 91:1, 98:8, 98:11, 98:25, 105:4 together - 10:1, 42:3, 42:4, 49:11, 99:13 tolerate - 88:25 tone - 64:22, 64:23 took - 40:1, 45:15, 51:24, 52:2, 52:3, 52:5, 52:6, 55:17, 57:18, 70:15, 88:6 top - 70:7 Torres - 104:11 torso - 96:12 tortillas - 87:25, 88:10, 91:9 tossed - 60:11 totally - 87:17 tough - 63:10</p>	<p>trade - 55:10 tragic - 72:2 trained - 67:19 transcription - 107:7 transcription/stenograph - 1:25 transpiring - 23:19 treat - 35:15 trial - 3:7, 4:2, 26:12, 26:16, 26:23, 62:9, 104:21, 104:22, 104:23, 104:25, 105:9, 105:12, 105:13 Trial - 1:3 tried - 45:19, 45:20, 58:13, 59:3 tries - 84:22 true - 62:10, 73:15, 76:20, 107:7 truly - 53:20, 107:14 trust - 34:7, 53:11, 53:12 truth - 66:12, 66:14, 66:16 truths - 79:16 try - 63:10, 79:16 trying - 49:4, 49:6, 61:2, 75:22, 85:11, 85:16, 95:16 turn - 61:14 turned - 87:1 Turtles - 87:23 twelve - 62:10, 62:11, 70:1, 70:5, 98:20 two - 5:24, 6:21, 7:2, 10:22, 28:24, 32:6, 35:8, 45:4, 45:17, 46:10, 47:8, 47:18, 48:7, 50:23, 51:2, 51:12, 51:13, 51:15, 54:4, 59:19, 61:24, 63:22, 64:3, 64:17, 65:5, 66:7, 66:19, 71:8, 71:18, 77:10, 77:22, 81:8, 81:17, 83:14, 83:19, 83:21, 85:1, 86:6 Two - 47:18, 61:24, 64:5, 67:12, 67:14, 81:19</p>	<p>58:23, 60:20, 61:2, 64:18, 68:22, 70:3, 71:22, 73:3, 73:22, 77:16, 79:23, 81:11, 81:18, 82:15, 82:19, 84:23, 86:2, 86:8, 91:16, 98:11, 98:21, 98:24, 99:1, 99:4, 99:7 Up - 46:7, 46:22, 52:18, 63:19, 65:8, 66:12, 66:16, 66:17, 66:20, 86:13</p>
V			
<p>vaginal - 36:17, 44:21, 90:21 valuable - 77:5, 77:10 vehicle - 7:13, 7:16, 7:18, 60:4 verdict - 23:14, 27:16, 27:24, 27:25, 28:23, 28:24, 42:3, 42:11, 62:24, 71:19, 76:22, 77:13, 78:18, 78:19, 78:22, 98:22, 99:14, 99:21, 100:25, 101:15, 101:18, 101:22, 102:15, 102:18, 102:23, 103:2, 103:6, 103:9, 103:12, 103:15, 103:18, 103:24, 104:2, 104:5, 104:9, 104:12, 104:15, 104:18 Verdict - 1:7, 101:25 version - 73:19, 73:20 vibe - 53:12 violence - 7:2, 7:4 Virginia - 104:4 virtually - 74:18, 75:9 vision - 42:23, 42:24 visit - 95:11 visited - 30:23 voice - 77:7, 77:9 voir - 30:18 Vol - 1:3 Volume - 1:2, 1:1, 1:10 volume - 1:12, 1:14, 107:10 Volumes - 1:2 vote - 27:23, 78:1 vs - 3:3, 4:2, 4:13, 101:8, 102:3 Vs - 1:9</p>			
U			
<p>ultimately - 36:20, 89:5 unable - 16:24, 20:11 unanimous - 101:22, 104:18 unanimously - 27:24 uncomfortable - 53:16 under - 28:19, 35:7, 41:16, 69:11, 70:21, 84:20, 92:1, 93:14, 96:23 understood - 65:19 unison - 40:20 unknown - 12:18, 13:1, 13:12, 15:15, 15:23, 16:15, 18:23, 19:5, 19:18, 20:1, 22:4, 22:17, 31:11, 43:21, 82:22, 92:8, 93:6 unlawful - 7:24, 10:18, 23:18, 33:24 unlawfully - 13:23, 14:7, 15:12, 15:20, 17:5, 17:12, 17:24, 18:8, 18:22, 19:3, 19:14, 19:22, 20:18, 21:6, 21:24, 22:12 unless - 13:17, 24:10, 24:19, 25:20, 26:19, 27:2 Unless - 16:22, 20:9 unlikely - 74:18 unsolved - 89:7 unusual - 62:13 up - 30:15, 31:19, 32:1, 32:14, 39:21, 40:3, 41:20, 42:5, 42:15, 43:7, 43:19, 47:2, 49:4, 53:7, 54:2, 54:3, 54:15, 54:18, 55:19, 55:22, 55:25, 56:4, 57:7, 58:22,</p>			
W			
<p>walk - 74:13, 94:8 wandered - 39:2 wants - 41:12, 47:17, 55:13, 56:18, 57:8, 57:10, 74:8 warning - 29:11 warranted - 11:2 wash - 68:9 washing - 95:14 water - 73:3, 73:9, 73:10 Wayne - 103:11 ways - 91:24, 92:6, 92:9 weak - 57:16 weapon - 8:6, 11:11, 12:5, 14:2, 14:11, 15:4, 17:7, 17:14, 18:3, 18:13, 31:10, 57:21 week - 3:9, 29:16, 40:22, 42:15 weigh - 35:23 weighing - 29:22 weight - 26:8, 27:18 whatsoever - 25:14 wheel - 57:1 whereby - 26:12 whip - 86:9 white - 45:22, 65:9 White - 63:25</p>			

whole - 47:7, 57:13, 66:24, 70:17, 70:18, 79:13, 80:4, 80:5, 80:10, 80:11, 80:13, 81:6, 82:20, 83:14, 84:23, 97:18
wicked - 95:21, 95:23
wife - 50:14, 50:16, 54:2, 60:20
willing - 70:11
window - 87:18
wish - 57:11, 102:8
witness - 24:16, 26:5, 26:8, 29:17, 35:14, 35:18, 35:19, 35:21, 37:12, 46:3, 53:7, 58:14, 60:7, 64:7, 64:9, 68:25, 69:18, 69:23, 70:24, 71:17, 71:20, 74:25, 79:20, 80:13, 81:3, 81:7, 84:2, 84:17, 93:24, 100:6
Witness - 1:11, 107:16
witness' - 35:15, 36:2
witnesses - 1:12, 27:18, 35:13, 43:15, 56:4, 60:3, 85:4, 85:12, 90:7, 93:11, 96:2
wives - 54:24
woke - 86:2
Wolf - 72:21, 74:17, 74:22, 79:23, 80:4, 93:2
woman - 67:25, 93:24, 95:5, 95:6
wonderful - 72:21
Wood - 2:4, 29:10, 29:12, 29:15, 40:14, 42:5, 42:15, 62:18, 76:4
Word - 1:10
word - 75:11, 94:16
wore - 87:7
works - 34:24, 36:5, 38:2
world - 96:20
Wow - 80:2, 80:7, 80:17, 81:15
wrestle - 70:10
writing - 28:11, 107:9
written - 27:20, 28:12, 65:22, 97:7
wrote - 65:21, 97:7, 97:16

Y

Y'all - 40:21, 42:19
y'all - 40:24, 42:1, 76:21, 85:20
years - 43:3, 45:5, 45:8, 45:19, 49:11, 53:3, 54:14, 54:22, 55:13, 55:19, 56:8, 58:1, 58:3, 65:10, 68:12, 68:15, 68:21, 69:1, 69:2, 69:8, 69:20, 70:1, 70:5, 70:7, 89:16, 90:11, 91:12, 96:13, 98:3
You-all - 63:12
you-all - 38:5, 38:15, 93:7
young - 74:4
yourself - 31:21, 31:23, 32:4, 67:10, 87:11, 95:23
yourselves - 105:11